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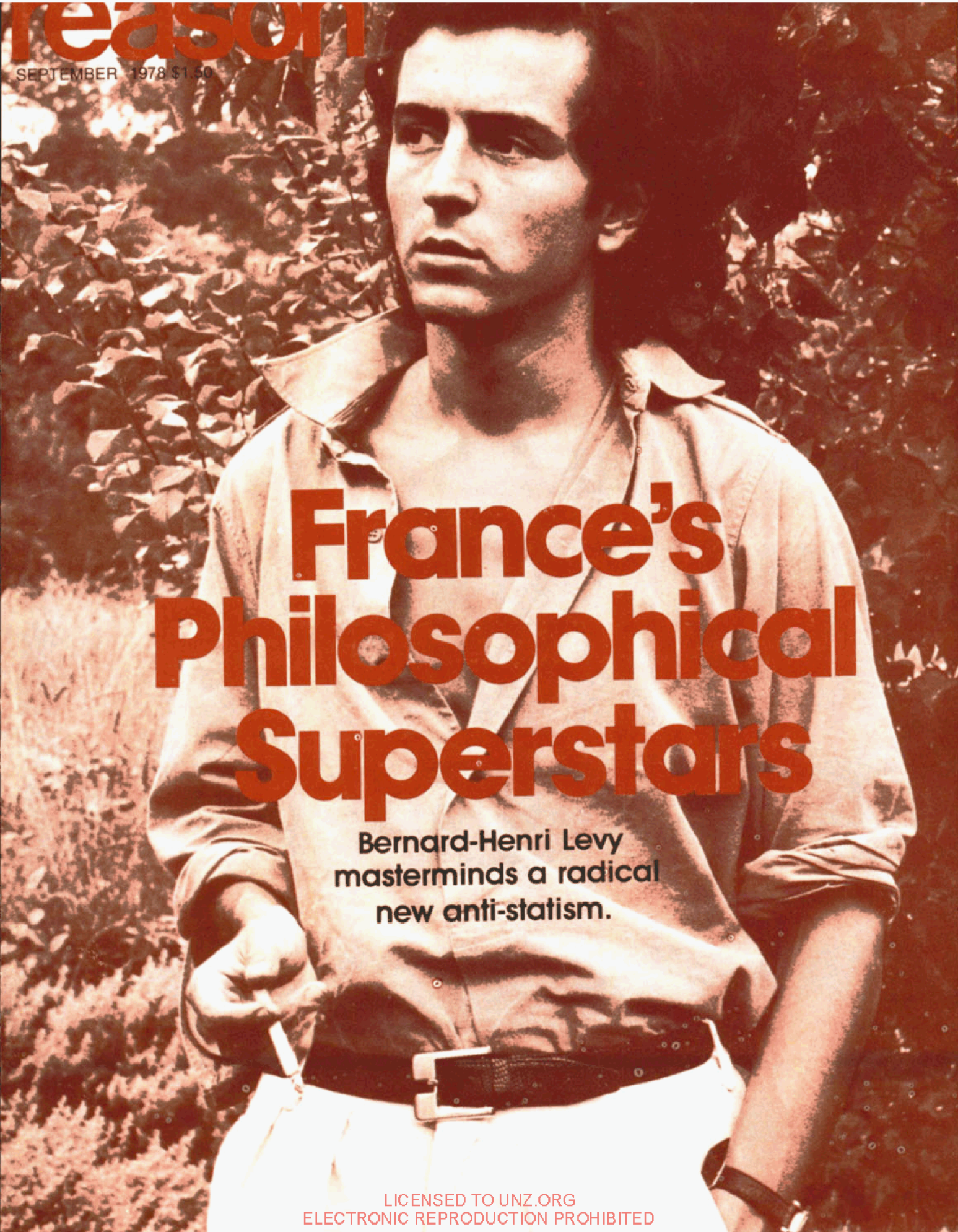

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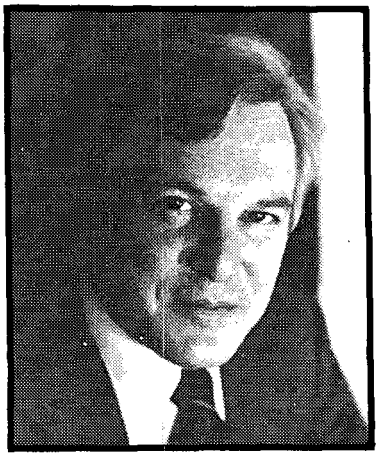

Nathaniel Branden is the author of *The Psychology of Self-Esteem, Breaking Free,* and *The Disowned Self.* He is in private practice in Los Angeles, is Executive Director of the Biocentric Institute, offers training to psychologists, psychiatrists and other mental health professionals, and conducts INTENSIVES in major cities throughout the United States.

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Dr. Cheri Adrian

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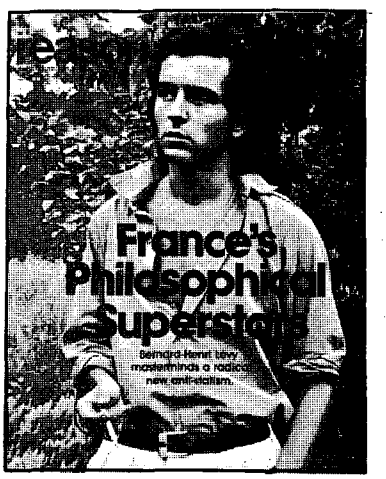

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editor's notes

• **ANNOUNCEMENT:** We are pleased to announce that beginning with this issue, REASON is being published by a new organization, the Reason Foundation. The creation of the Foundation represents the culmination of nearly a year's efforts to develop a firmer basis for achieving the goals of the magazine's publishers.

The Reason Foundation has been set up as a non-profit educational organization, incorporated in California. Its trustees are Manuel S. Klausner, Tibor R. Machan, and Robert Poole, Jr.—former owners of REASON, and R. C. Packer, an experienced publisher from Australia, now resident in Southern California.

The Foundation's activities will not be limited to publishing REASON. Under the supervision of Educational Programs Director Tibor R. Machan, it will sponsor conferences and seminars; commission research by students and university professors; and publish books, papers, and monographs. It will also take over publication of the scholarly journal *Reason Papers*. All Foundation activities will relate to its principal goal of fostering a greater understanding of the application of reason and logic to the achievement of a good and free human community. Contributions to the Reason Foundation will be tax deductible.

• **STAFF CHANGES:** As part of the continuing upgrading of REASON magazine, Ms. Marty Zupan has become full-time Associate Editor, working with Editor-in-Chief Robert Poole, Jr. in the Foundation's new downtown Santa Barbara offices. Improvements in the magazine, such as our new color covers, will continue to be introduced on an evolutionary basis. Several more new features are being planned and will be announced shortly in this column.

• **PUBLICITY:** Susan F. Mollison's article "Trouble on the Range" (REASON, December 1977) received first prize at the *Reader's Digest* writers workshop held in June at Utah State University. Robert Poole's article "African Deception" (July 1978) was the subject of a half-page discussion in the June 12 issue of *Barron's*. It is also to be reprinted soon in the magazine *Space World*.

• **EDITORS' ACTIVITIES:** We have reported, on and off, about the various activities of REASON's editors in this spot. Our readers might want to know of the following works by Senior Editor Tibor Machan published recently: "Nozick's Geometrical Libertarianism," *The Occasional Review* (Summer 1977); "Are there Any Human Rights?" *The Personalist* (April 1978); "Human Dignity and the Law," *DePaul Law Review* (Summer 1977); "The Ethical Imperative of Capitalism," *The Humanist* (July/August 1978); "Taking Capitalism Seriously: A Review Essay of I. Kristol's *Two Cheers for Capitalism* and D. Devine's *Does Freedom Work*," *Policy Review* (Summer 1978); "Was Rachels's Doctor Practicing Egoism?" *Philosophia* (Summer 1978); "Recent Work in Ethical Egoism," *American Philosophical Quarterly* (January 1979), and "Against Nonlibertarian Natural Rights," *Journal of Libertarian Studies* (Vol. 2, No. 3). Machan also spoke before the Wisconsin Forum in Milwaukee on May 22 and was guest speaker at a meeting of Ontario Libertarian Party members on June 16.

Senior Editor Machan and Contributing Editor Alan Reynolds co-authored an article, "Justice, Ethics and Government Regulations," for the *New York Times* Op Ed page, July 8. It reiterated in very condensed form the argument presented by Machan in "Deregulation Is a Moral Issue" (Reason, March 1978).

Editor Robert Poole continues as a consultant to the Santa Barbara-based Local Government Center. In this capacity, he helped LGC to put on a workshop on ways of cutting local government costs, in light of Proposition 13, for officials of Santa Cruz County, California July 14 and 15. The morning of July 14 he appeared on San Francisco Channel 44's "News Call" interview program to talk about such local government reforms as privatization and user charges.

NEWS FLASH:
At press time REASON has confirmed that producer Michael Jaffe is in final negotiations with Ayn Rand and NBC to produce an eight-hour TV movie of *Atlas Shrugged*. Sterling Silliphant has reportedly been signed to write the screenplay. Jaffe's office estimates the odds of successful negotiation at 98 percent. The project is expected to take two years to complete.

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Married. Single. Or divorced. Over 20.2 million American men and women now have extra spending cash every week. By taking instant advantage of unique, do-it-yourself legal tax elimination techniques. Now you can learn these secrets too. Here's how . . .

During 1976's furious Republican primary battles, then President Ford scored points with the voters wondering aloud why Ronald Reagan paid a mere $600 in federal taxes one year on an income of over $80,000. I wondered how he did it too.

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Why? . . . it was simply because these aware individuals were smart enough to take advantage of the same legal methods to avoid taxes you can. No matter what your current income is today. Now you can join over 20.2 million American individuals who pay little or no tax. Easy.

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Millions of Americans already take advantage of these do-it-yourself success secrets, principles, methods, techniques, and tax formulas. And I'll describe to you how you may obtain my new tax bible with absolutely no risk. In fact, I'll even pay you a $2 reward for examining it.

The poor get federal housing, food stamps, and other welfare benefits. The rich get energy allowances, lower interest rates on loans, and extravagant expenses accounts.

What do you get?

The answer is that you get to pay higher and higher taxes. Isn't that wonderful? You work harder and longer each year for your money. And then give Uncle Sam a bigger share of it.

What can you immediately do about it?

■ YOU CAN ALSO BECOME WEALTHY

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Mike Tecton, a Washington D.C. architect, has been taking advantage of a startling tax loophole for 17 years and paying not a penny of federal income taxes. Jack Anderson reports that over 5 million Americans are avoiding their taxes this way. And that over 2,000 people are joining his ranks daily. Now you can too. Read how on page 135 of my new tax bible.

Irwin A. Schiff, an insurance, investment, and financial planner from Connecticut has legally avoided income and social security taxes since 1973. He is even due a refund of all taxes he paid from the year 1968 to 1973. Now you can use this legal tax avoidance *formula too. Read how on page 201 of* my new tax bible.

■ WHAT ABOUT YOUR FINANCIAL FUTURE

Everything you will need has been published *in my new tax bible. Instructions.* Do-it-yourself tax strategies. Techniques. Methods. Secrets. Formulas. Names & addresses. Telephone numbers. Proof. Documentation. Evidence. Forms. Step-by-step guidelines. There has never been a book published like this before.

HOW TO IMMEDIATELY AVOID YOUR TAXES LEGALLY – JUST LIKE THE MILLIONAIRES will provide you with financial security. Financial freedom and privacy. Money independence. And money flexibility.

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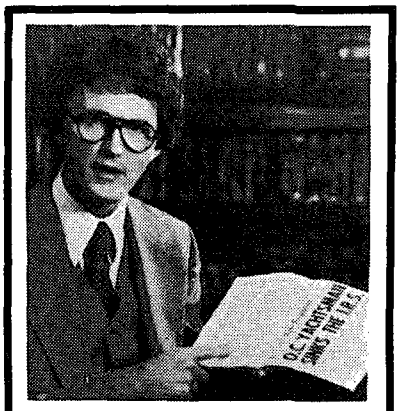

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bargains on the market today." **O.J. SCHREIBNER, Atlanta, Ga.** writes, "most useful and enlightening information I have ever come in contact with." **JACK RIFEN, Kansas City, Mo.** says, "your package is the most specifically organized that is available."

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I also understand that I have a 1 year moneyback guarantee. Which means that I can try one of these techniques. And if I don't think that this new tax bible is the greatest bargain I ever got, then I can return it after 30 days and within 1 year and receive a check from you for $17. A $2 reward for my time and good faith.

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Left-Wing Bias on Human Rights

editorial

The troubles and horrors of the current African scene do not lend themselves to simple explanation and remedy. The frequently heard approach of attributing all of that continent's problems to colonialism just won't do the job. What colonialism *is* takes a great deal more work to find out than most journalists are willing to exert, especially in our times when slickness and happy talk have come to dominate where integrity and precision should reign. That other explanation by means of labeling, namely, frequent and indignant reference to imperialism, is no better alternative. Africa's relationship to the rest of the world has involved a complex mixture of force and trade. That fact, coupled with the complex issue of legitimacy in national and international political and commercial representation, stands in the way of saying, simply, that imperialism explains the misery of most Africans today.

Then there is also the troublesome issue of citizenship. Who are the Africans? More precisely, who are South Africans, Rhodesians, and the various other national inhabitants? Who owns the land, the wealth, the resources, material or otherwise, in these various artificially bounded communities? There is little substance in most of the voluminous analyses being done in the pages of prominent newspapers and magazines which nominally address these issues. When the fundamental perspective on the basis of which people try to analyze and explain the world involves severe problems, the subsequent applied work will necessarily suffer. Should we analyze the various problems by reference to climatic factors? psychological laws? economic principles? sociological factors? religious dogmas? a deterministic conception of human nature? a view of human beings as morally capable and responsible beings?

Whichever (combination) of these one adopts—and everyone adopts some such (combination of) perspective—his particular explanations and analyses, focused on various problems at home and abroad, will reveal their influence. My examples of explanations which invoke colonialism and imperialism are but the most commonly heard ones when we come across discussions of Africa's present turmoils. But even the idea that there are uniquely *African* turmoils presupposes that Africa is unusual in some respect. One might even say that focusing on Africa already reveals a kind of racism.

It is just this alternative that suggests itself in a recent issue of *The New Republic*. Without attempting to take issue with that magazine's entire editorial position, it is interesting and instructive to consider how one editorial attended to at least one topical issue associated with an African country, namely South Africa.

Let me admit from the start that South Africa's situation, despite its complexity, does not hide a widespread condition of gross injustice. That the human rights of millions of that country's people have been and continue to be violated is so evident that no problem arises concerning one's pronouncement of the basic injustice permeating that nation's legal system. This matter, however, can be assessed in very different ways. One can conceive of the South African situation along different lines of analysis, without denying the basic point made above.

Recently the editors of *The New Republic* advanced a peculiar argument as to why South Africa's political degradation is far more serious than the violence and tyranny of such nations as Russia, China, and Ghana, for example. TNR's editors seem to have felt the need for coming to grips with many intellectuals' inconsistency about condemning injustice across the world. But beyond realizing the need to explain away the inconsistency, TNR did little better than the rest.

The editorial in question argued that since South Africa was settled initially by citizens of Western countries, namely, Great Britain and the Netherlands, its present regime must live up to the high standards of *Western* political culture, unlike what should be said about other dictatorships and tyrannies across the globe!

The editors of TNR have reaffirmed, in this carefully constructed piece of rationalization, the very idea that has served the government of South Africa so well in its efforts to justify apartheid, namely, that the Western European societies are culturally and morally superior to others and are thus entitled to special considerations which native Africans cannot reasonably invoke. If Western European culture is somehow inherently superior to those of other communities—that is, if Western Europeans as a part of humanity are superior (by their acceptance of superior standards) to other human groups—then apartheid is not difficult to justify. The inherently morally superior, as Plato taught in the *Republic*, should (ideally) rule a community. It seems that the editors of *The New Republic* are in considerable sympathy with that old "republican."

The editors of TNR appear to believe that inherent moral worthiness requires that one treat others as equals, not as slaves or political subservients, but this just does not follow. John Locke had to argue from the premise of every person's initial (inherent) moral equality, as did the Declaration of Independence, because if by birth some are more deserving than others, then it is a small step to the view that they carry greater authority as well. But the editors of TNR were willing to accept this result before they would accept the logical implication of their criticism of the South African regime's tyrannical behavior.

Why should we not demand the abolition of slavery from the Soviet regime? Why should we not insist that tyranny by black Africans toward other black Africans be stopped immediately? Why shouldn't China's tyrants change their ways? Well, implies *The New Republic*, those people really aren't capable of moral improvement, they cannot adopt the high moral standards of the West. They are inherently barbaric, unlike the fine white racists who run the government of South Africa.

If any thesis plays into the hands of South Africa's authoritarian rulers, this one surely does a superb job at it. South Africa's leaders and apologists can reason, in total accord with the editors of *The New Republic*, that "our predominantly white civilization has long since acknowledged that people of different colored skin are not different from white people in the essential humanity that we share." But black African civilizations do not share this view, as TNR wants to argue. Ergo, the whites must be protected from the unenlightened savages! Balderdash!

The plain fact is that any human being aware of even a modicum of the results of human thought about morality and politics should realize the evil of tyranny. South Africans have no more or less right to be tyrants than the leaders of Russia, China, or Libya. No moral relativism can excuse the leftist bias on human rights issues in our time.

Tibor R. Machan

letters

Questioning Tax Limits

The article "How to Draw the Line on Taxes" by Rickenbacker and Uhler [June] may have isolated the "flaw" in our system—irresistible pressures brought to bear on legislators to vote for new spending programs. However, their contention that they have considered "all" the alternative methods of correcting that flaw isn't without a flaw.

The authors' statement that the political process should decide the priorities of political spending seems to imply, contrary to their probable intention, that many of today's governmental activities are "legitimate" constitutionally. Since they are not, how will even a constitutional tax limit solve this very basic problem? Further, exactly (repeat, EXACTLY) what is the limit and what would prevent our legislators from establishing a high priority for further restrictions on individual freedoms at the expense of national defense, for example? This question is no more illogical than asking what is to stop our legislators from establishing a 100 percent tax—both actions lead in the same direction, to abolish the Constitution!

Many of the insights into the general problem of the extensive growth of government which are cited in the article would indicate that the constitutionally mandated tax limit is just as likely to be bastardized as has been the "commerce" clause in the existing Constitution. Who will be the Solomon to write the amendment so that it will meet all requirements and yet leave no possible loopholes? In Wisconsin, for example, as perhaps is the case in other states, issuance of bonds has in effect extended spending without currently raising taxes—but the result will be either to default on debts or raise taxes later! Further, considering all the indirect, hidden, or wide variety of taxes, as well as inflation through government control of money, how can this complex issue be resolved with a "tax limit" amendment which is at the same time understandable by the public and not conducive to manipulation?

I believe the answer lies in our having legitimatized the function of state and federal legislators as being a "career" with all its attendant characteristics. "Career" functionaries in all activities seem to me all too disposed to make decisions in their own best interest—a trait quite admirable in one's private affairs, but devastating when dealing with other people's lives, property, and freedom! Wouldn't this factor suggest that while the citizens of this country still have the power of the ballot box, they have the power to relieve each and every legislator of the "pressures" which he claims as his excuse? Vote every (repeat, EVERY) incumbent out of office...each term, until such a limitation is also a constitutional requirement; that is, a limitation of one term in any one elective office!

There is a supplementary requirement for constitutional amendment which the citizens of this country should seriously consider to assure more representative legislators! Limit campaign contributions to the individuals with residence in the legislative district. This would not only favor the candidate most desired by the constituency, but would have the additional advantage of putting a natural and automatic limit on campaign spending for all contenders for any office for any given election....

Kurt H. Schiffleger
Sarona, WI

Moral Legitimacy

Your recent "Brickbat" on Palestinian terrorism and the Israeli invasion of Lebanon [June] points out, correctly, that morally equivalent acts are often condemned when done by private individuals but approved of when done by States. In the particular case cited, however, the acts of the Palestinians and the Israelis are *not* morally equivalent, and would be judged differently even if both were private.

What the Israelis did was to attack Palestinian guerrillas who were making war on the Israelis and hence (if one accepts the pro-Israeli interpretation of the very debatable property rights situation in Israel) coercing them. In the process the Israelis destroyed the lives and property of a large number of innocent bystanders. What the Palestinian terrorists did was to deliberately attack innocent bystanders, in the belief that doing so would discourage the Israeli soldiers (whose wives, children, and friends were being attacked) from continuing to fight the Palestinians, and hence (if one accepts the pro-Palestinian interpretation of the very debatable property rights situation in Israel) stop the Israeli soldiers from coercing the Palestinians.

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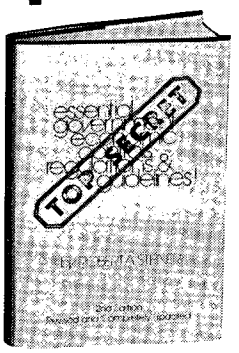

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Whether one should regard either, neither, or both actions as morally legitimate is a difficult question, depending both on which side one believes to be enforcing, or more nearly enforcing, legitimate rights, and on what one believes about the rights of innocent bystanders. But there is surely a morally relevant difference between shooting at a man who is hiding in a crowd and shooting at you, with the knowledge that you are quite likely to hit an innocent bystander, and dealing with the same man by seizing his wife and children and killing them off one by one until he surrenders.

As to the final reference to "those sectarians who only oppose the initiation of force when it is done by the goyim," that is what is known as an ad hominem argument—it translates as "anyone who disagrees with the argument I have just made is a Jewish bigot." I suppose I could have found someone with a different name to sign this letter, but that would mean accepting Mr. Birmingham's implication that arguments ought to be judged according to who makes them.

David Friedman
Blacksburg, VA

Anti-Semitism?

Bill Birmingham's "Brickbats" had an unfortunate anti-Semitic aroma in the June issue. If this was unintentional, he ought to clean it up. If it was intentional, REASON has something to clean up.

The essence of libertarianism is that people should not have their lives unduly interfered with by others. To this end is government's primary justification for being. Whether it's PLO, Red Brigades, or Rhodesian terrorists, government's function is to protect its citizens against those who would interfere violently. The Israelis have tried with more modest means to protect their citizens from PLO criminals. Obviously, those means were inadequate. They are therefore justified in using whatever steps they deem necessary to protect Israeli citizens from such unwarranted interference in their rights to live in peace.

Eugene L. Notkin
Boston, MA

The editor replies: We sincerely regret any implication of anti-Semitism some readers may have deduced from the commentary on PLO-Israeli conflict. Reasonable people can, indeed, differ over issues as complex as those in the Middle East, without any sort of ethnic or religious prejudice being involved. As long as he's being critical, reader Notkin might wish to reconsider his view that the Israeli government is "justified in using whatever steps they deem necessary" to protect its citizens. That kind of thinking smacks disturbingly of "the end justifies the means," and I think we all know where *that* can lead.—**R.P.**

Term vs. Whole Life

I read David Lloyd Sutton's article on Life Insurance [June] with much interest. I am sorry to say that I am in total disagreement with his opinions and reasoning.

I personally sell Annual Renewable Term for most of the real needs out there. This "natural" premium is what all life insurance companies use to cover the "net amount at risk" in their whole life policies. If it is good enough for the insurance companies to cover what they have at risk out there, then it is good enough for our risks also.

There are so many errors in Mr. Sutton's article that I cannot afford to take the time to expose them all... however, it should be pointed out that the "cash value" element in a whole life policy draws very low interest and the insurance company can refuse to honor a policy loan for up to six months if they want to.

Most people buy life insurance to protect their loved ones against loss of income if premature death occurs. Or it is used to cover debts and key men in business enterprises. Term insurance works well for this purpose.

Whole life works well in the older ages if still needed, for last expenses, estate shrinkage, etc., or in very small amounts at any age.

The job of a professional insurance agent is to place the interest of his client ahead of his commission earned on the higher priced whole life plans... a task not too easy for most life insurance agents to accomplish.

John C. Hodde
Colville, WA

Dangerous Treatment

I couldn't quite swallow the laudatory analysis of the work of Samuel Yochelson and Stanton Samenow in "Trends" [June]. While I'm no apologist for the standard liberal programs of "rehabilitation" or the social/metaphysical theories which underpin them, I see some very real dangers in future programs which may be based on simplistic acceptance of the conclusions of *The Criminal Personality.*

Yochelson and Samenow specifically advocate forcibly breaking down an "offender's" personality and his or her conception of him- or herself, and substi-

tuting a personality approved by the jailers. This is particularly scary because no distinction is made between real criminals and social heretics, who, as we all know and should never forget, now comprise a large percentage of the prison/parole/probation population.

I see little likelihood that the work of Yochelson and Samenow will lead to an enlightened, rights-oriented recasting of our penal systems. Rather, I see a great probability that it will deliver to the State sophisticated tools and methods of mind control, along with a host of nice-sounding excuses to use them. Forcible intervention, not *against*, but *into*, a person's personality is a methodology far better suited to punishing free thinking than to controlling crime, and that is just how I, for one, would expect it to be used. This should be strongly suggested to libertarians by the use of terms like "thinking errors" to describe the "cause" of crime.

I have little doubt that Yochelson and Samenow, as well as the heads of the statist agencies which funded their research and provided them with "subjects," would disapprove of my personality and label me as a "sociopath" whose mind ought to be restructured. Before touting *The Criminal Personality* as a remedy for liberal foolishness, I urge all libertarians to re-read *1984* and think twice.

Patrick L. Lilly
Colorado Springs, CO

The editor replies: Mr. Lilly has made a good point. The treatment method advocated by Yochelson and Samenow, like psychosurgery, should be used only with the informed consent of the subject.—**R.P.**

Abortion and Contraception

The abortion/anti-abortion debate [April] presents some difficult problems. Hospers has said that ethical dilemmas will occur in our libertarian future and that their solutions will not be clear cut.

Is the ovum, from the moment it is fertilized, to be granted the full rights and privileges of an adult because of its human potential? I am still working on that problem with my children.

When do we become human? When does abortion become murder? I do not know. The problem I would like to deal with is somewhat more tangible.

Conception takes place in the fallopian tubes. The fertilized ovum then takes 2-3 days to travel to the uterus where implantation takes place. The IUD (coil) is an abortion device. IT DOES NOT PREVENT CONCEPTION. IT PREVENTS IMPLANTATION OF THE FERTILIZED OVUM INTO THE UTERINE WALL.

Therefore, to prevent all abortions IUDs must be outlawed.

Today's IUDs are made so that they are visible on X-rays. Will the radiologist who sees an IUD on film be required to report this finding to the "proper authorities" (the internal security police, perhaps?) If he fails to make his report will he then be charged as an accessory to the crime? Accessory to murder? To abortion? To wearing an IUD?

A market in polyethylene IUDs which would not show up on X-rays is easily forseen.

While this problem may lack the intellectual appeal of a fight for individual rights, the concept of trying to deal with a black market in radio-lucent IUDs in a libertarian society staggers me. Physical examinations at airports and bus terminals? Argh!

My Friends of Liberty, keep up the good work.

Jay Salwen, M.D.
Schenectady, NY

Bakke Decision

In his February editorial, Tibor Machan reflected on the "Real Problem" with the (*Continued on p. 47*)

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brickbats

☐ **The Spirit of the Age,** according to Nick Thimmesch: "The United States stands as a nation of bourgeois wimps irritated by the Soviet-Cuban aggression in Africa, but turning its back to drink beer and watch television." (*Washington Post*, May 28, 1978.)

☐ **If you're planning to attend the 1980 Moscow Olympics,** Tass reports that "Soviet meteorologists prepared a forecast of weather in Moscow on July 19-August 3, 1980, the time of the 22nd Olympics. According to their forecast, the average daily temperature will be 18° Centigrade, relative humidity will be 70 percent and wind velocity will be 3 to 5 meters per second." Russian weather is very predictable—except on the collective farms.

☐ **The Most Enlightened Generation Since Creation Dept.:** According to over 800 high school students surveyed by the *Ladies Home Journal*, the man and woman who have "done the most damage to the world" are Adolf Hitler and Anita Bryant. For the woman who has done the most good, they chose La Boca Grande herself, Eleanor Roosevelt. Henry Kissinger was voted history's greatest statesman, and Billy Graham is the most important religious figure. God came in second.

☐ **After the victory of Proposition 13,** the evil George McGovern denounced the California voters as motivated by a "degrading hedonism that tells them to ask what they can take from the needy"—this from the man who proposed to soak "the rich" who make over $12,000 a year! The Nearsighted George McGoo was seconded by black activist Jesse Jackson, who called 13 "racist." (Jesse always was a bit weak in the head. He also thinks abortion is "racist.") Meanwhile, the *Wall Street Journal* notes that the same UCLA Graduate School of Management team which predicted economic chaos if 13 passed, now thinks it won't be so bad, and may even have (surprise!) "a positive effect." As the *Journal* observes, "This may be the first time in this century where an economist admitted error."

☐ **Some reflections on the "invasion" of "Shaba":** Good old Patrick Buchanan was heard from, of course, with a jeremiad against the "Katangese terrorists." (When Moishe Tshombe led them, American conservatives idolized them as "Katangese freedom-fighters." You know the declension: *I* am a freedom-fighter, *you* are a rebel, *he* is a terrorist.) Pat predicts that "A third invasion of Shaba [nee Katanga] may be expected, and a fourth, until the province is ripped away from Zaire—a province which is to Zaire what the Ukraine was to imperial Russia; the sine qua non of national survival." The reader will notice that one may substitute "Soviet Russia" for "imperial Russia" in the above without changing the meaning one iota... **Evans and Novak** were also up (or down) to par, breathlessly revealing that "Just before the Soviet-Cuban directed invasion May 14 into the mineral producing heartland of Zaire, Soviet agents quietly purchased nearly 400 tons of scarce cobalt from European brokers.... Here was a clear case of foreknowledge." The price of cobalt did increase after the invasion closed the Zairean mines, but E&N would have us believe the Soviets would risk their Katanga scheme (if theirs it was) for a lousy "$8 million"—hardly an example of the satanic cunning E&N usually attribute to them. In fact, the case is not clear at all: the *Washington Post*'s Bernard Nossiter suggests (May 24, 1978) that the Soviets were just building their stockpile. They bought from 500 to 2000 tons of cobalt in the first five months of 1978 (the US stockpile is about 20,500 tons, almost four years' supply), haggling over 30 or 50 ton purchases. "If Moscow knew that the world's supply was going to be interrupted," notes Nossiter, "it did not give the game away." Incidentally, the price of cobalt had already increased by about 200 percent, for various reasons, *before* the invasion. And the "heartland" of Katanga is surrounded on three sides by foreign countries.... **When the Katangese invaded in 1977,** Secretary of State Vance admitted there was "no hard evidence" of Cuban involvement. This time Vance and Carter claim there is such evidence, but that they can't reveal it lest they jeopardize "intelligence sources." On June 2, they showed it behind closed doors to several congressional leaders, who seemed to swallow it whole. Senate Minority Leader Howard Baker (R-TN) emerged claiming that "the invasion of Zaire couldn't have been done" without the Cubans. True, he saw "no documents or photographs," but Jimmy said there were such, and didn't he promise never to lie to us? As Minority Leader, Baker succeeds Hugh Scott, who once said Nixon had convinced him of his innocence in the Watergate cover-up, by showing him "evidence" which Scott was not at liberty to divulge.

☐ **Pentagon Capitalism Dept.:** Syndicated columnist Clayton Fritchey quotes the egregious Maj. Gen. George Keegan as saying "I can say without reservation that for every dollar of support which America has given Israel, we have gotten a thousand dollars worth of benefits in return, which are incalculable in their value to the US armed forces." According to the *Christian Science Monitor*, Israel has received more than $5.5 billion in military credits (loans to buy weapons) from the United States since 1970, of which Congress has already "forgiven" $3.5 billion. Which would put the "incalculable" benefits at $3.5 *trillion*, more than the entire Gross National Product! This is typical accuracy for the ex-head of US Air Force "intelligence"; Keegan apparently hasn't been right on anything since he invented the "missile gap" of the early 1960's. Which is a shame; by Keeganite logic we could afford to abolish the Defense Department if we cut Israel's handouts to $126 million a year. Considering that the United States came closer to World War III during the 1973 Yom Kippur War than at any time since the Cuban Missile Crisis, Keegan just might be on to something.

☐ **Creeping libertarianism in the Soviet Union?** Last June a Soviet eavesdropping station was discovered under the US Embassy in Moscow. Hardly the first time the Russians got caught spying there, but this time they complained about the Americans breaking their spy devices, and demanded they replace them. One is reminded of libertarian doyen Robert LeFevre, and his belief that a kidnap victim has no right to break the chains that bind him. They're the kidnapper's "private property," you know.

☐ **It's official:** James McIntyre, director of the Office of Management and Budget, says there will be no balanced budget by 1981, and probably not even by 1982. Yet another broken campaign promise for The Peanut. Nonetheless McIntyre insists that he and Jimmy are "fiscal conservatives," although not with "a meat-ax approach." Hell, they don't even have a meat-tenderizer approach; McIntyre admits "There have been no major programs that we've eliminated."

—Bill Birmingham

trends

Tax Revolt: California Copes

In the wake of the two to one victory of Proposition 13, Californians are relearning an old lesson: politicians lie. Prior to the June 6 election, mayors and legislators painted pictures of gloom amd doom: massive layoffs, severe cutbacks in police and fire protection, libraries closed, transit lines shut down. And Governor Jerry Brown told voters that the state would not bail out cities and counties if they were so foolish as to pass Proposition 13.

But faced with an overwhelming mandate on June 6, the politicians' tune changed, as if by magic. The state's surplus, pegged by Brown at only $3.4 billion before the election, was revealed to be $5.8 billion. A widely publicized pre-election forecast by the UCLA Graduate School of Management that 450,000 people would lose their jobs if 13 passed was revealed to be a vast overstatement—since it failed to even take into account possible use of the state surplus to bail out local governments.

And that, of course, was what the legislators decided to do. Five billion of the $5.8 billion surplus was promptly allocated to local governments, meaning budget cutbacks will be limited to a few percent. Police and fire departments, for the most part, are not being cut at all, nor are many school districts (except for summer school). The bail-out covers only the current fiscal year, however. Real economies will have to be instituted in subsequent years—but for now the cities and counties have some breathing space. To lay the groundwork for such economies, Los Angeles County voters will be asked in November to approve a measure allowing County Supervisors new freedom to contract with the private sector to provide public services.

Meanwhile, California politicians are falling all over themselves trying to join the tax revolt bandwagon. Governor Brown has proposed a constitutional limit on state spending; he has been joined in this objective by Paul Gann, co-author of Prop. 13. Gann has put together the California Committee to Limit Government Spending to lobby the Legislature to get such a limit onto the November ballot. Failing that, he vows a grass-roots campaign to do so in 1980. Given the mood of California voters, such a measure is virtually assured of passage.

Tax Revolt: Going Nationwide

Although California has received the most publicity, the tax revolt is catching fire all across the country. In Oregon a property tax limitation measure similar to Prop. 13 appeared to have qualified for the ballot at press time. It would limit property taxes to 1½ percent of market value and require ⅔ votes to raise either state or local taxes. A state spending limit constitutional amendment has qualified for the November ballot in Michigan. A similar measure two years ago was defeated by a last-minute scare campaign. In Massachusetts a tax limit initiative, having garnered the necessary signatures, overwhelmingly passed the first of two required legislative approvals in June. It must be approved by the legislature again next year in order to go on the 1980 ballot. In Colorado a similar tax limitation amendment has qualified for the November ballot. Three alternative initiative measures are circulating in the state of Washington, which already has a constitutional limit on property taxation. Overall, reports the National Taxpayers Union, efforts of this sort are under way in 27 states.

Tax Revolt: Washington, Too

State politicians aren't the only ones climbing aboard the tax revolt train. Members of Congress—all 435 House members up for re-election in November—are doing their best to appear responsive to the new trend. The House OK'd spending cuts of from two to five percent in the budgets of the Departments of Labor, State, Commerce, Justice, and HEW. Both foreign aid and public works spending were cut. The Senate imposed two percent cuts on the Treasury Department, the White House, and several smaller agencies. It also voted 49 to 39 to forbid the President from imposing import fees on oil. This move was aimed at blocking Carter from getting around the expected defeat of his proposed tax on crude oil. How many of these cuts will survive House-Senate conference committee negotiations, which are much less visible to the voters, is anybody's guess.

Congressmen are also proposing and endorsing limits on federal taxes and spending. Rep. Philip Crane has introduced a constitutional amendment to limit federal government spending to one-third of national income. If in effect at present the measure would reduce current spending by $10-12 billion. More than one-third of all House members (160 of them) have signed on as cosponsors of another constitutional amendment, this one requiring the federal government to balance its budget. As of June, 24 state legislatures have passed resolutions calling for a constitutional convention to enact such an amendment. And California appears likely to become the 25th, since the measure passed its Senate 25-2 in May and has 27 cosponsors in the Assembly (where it will be taken up this summer). Delegates to the 127th national convention of the American Medical Association endorsed the balanced budget amendment in June, as have a variety of other organizations and individuals.

If sustained, the rising sentiment for tax reduction will have succeeded in changing the terms of political debate. We can welcome the spectacle of politicians competing for our votes by telling us *not* how much more they can "give" us, but how much they can *save* us.

Free Trade Victory

In a unanimous decision, the US Supreme Court has upheld the principle of free trade. It did so by rejecting a claim by the Zenith Cororation that "countervailing tariffs" should be imposed on Japanese electronics imports because they are not taxed in Japan.

Zenith's position was opposed by representatives of the US Treasury Department. They contended that the 1897 law under which Zenith had brought its case had never applied to a foreign government's refusal to collect excise taxes. A change in interpretation at this point "would disrupt trading and cause economic confusion," and "would undoubtedly lead to retaliation against American exports." These views were seconded by many economists and trade experts. The Court decided the issue on the rather narrow grounds that "It is not the task of the judiciary to substitute its views as to fairness and economic effect for those of the [Treasury] secretary."

The Supreme Court's decision removes a major potential stumbling block to ongoing international trade talks. Had Zenith's position been upheld, the prospects of a new trade war akin to that set off by the Smoot-Hawley Tariff of the

1930's were very real. During 1976 over $50 billion of goods were exported to the United States without the collection of excise taxes. All would have been vulnerable to imposition of countervailing tariffs, virtually guaranteeing retaliation. Instead, the Court's vindication of free trade paves the way for a new round of cuts in tariffs and non-tariff barriers.

Stimulating Savings

A funny thing happened to the American economy over the past decade: people stopped investing. In 1968 over 300 high-technology companies were founded; in 1976 none were. In California only $6 million in venture capital was raised last year, compared with $360 million in 1969.

In 1967 Americans were saving 7.5 percent of their incomes. By 1977 the savings rate had dropped by one-third, to 5.1 percent. And that savings rate remained by far the lowest among all Western industrialized countries. While our savings rate was dropping to 5 percent, the savings rate in Japan was increasing, from 18.5 percent to 21.5 percent; in France, from 15.9 to 16.1 percent; in West Germany, from 11.3 to 14.0 percent over the decade.

It isn't too hard to discover why. The United States has the highest capital gains taxation in the industrial world. The maximum US rate of 49 percent compares with *zero* in Italy, France, Japan, and West Germany. The maximum US rate had been "only" 25 percent until the egalitarian Tax Reform Act of 1969.

The stock market, too, has reflected the effects of punitive taxation. Economist Martin Feldstein and colleague Joel Slemrod have studied the tax returns of a sample of investors who sold stocks in 1973. Extrapolating to the economy as a whole, they found that investors paid taxes on $4.5 billion in nominal capital gains that year. But when inflation is taken into account, the apparent gains become *capital losses* of nearly $1 billion. Since adjusting for inflation is not permitted in computing capital gains taxes, investors are forced to pay taxes on gains never actually realized. With inflation running at much higher levels since 1973, it's no wonder the Dow Jones industrial average has declined by 0.2 percent since then.

The solution is obvious. If Americans are to begin saving and investing again, they need to be rewarded rather than penalized. Consequently, many economists have been urging that the capital gains tax be reduced or eliminated. Michael J. Boskin of Stanford has found that a 10 percent increase in the real after-tax return on savings will generate a 4 percent increase in the amount saved. He estimates that eliminating capital gains taxes would increase the GNP by $100 billion a year. Data Resources, Inc. estimates that such a change would actually *increase* total federal tax revenues by $38 billion over a five-year period.

Rep. William Steiger has proposed cutting the maximum capital gains tax rate back to 25 percent. Among those who have analyzed his proposal is Michael K. Evans of Chase Econometric Associates. Within five years, he finds, the increased investment from just this minor change would generate 440,000 new jobs. Increased production would lead to higher corporate income tax collections, reducing the federal budget deficit by $16 billion.

Oblivious to these economic realities and reflecting his usual populist egalitarianism, Jimmy Carter earlier this year called for *increasing* capital gains taxes still further. Backing off from this idiocy in the face of mounting support for the Steiger proposal, Carter still saw fit to denounce the latter as providing "huge tax windfalls for millionaires and two bits for the average American."

We can only hope enough average Americans are smart enough to realize that rewards for investors—millionaires or otherwise—are what lead to new jobs and economic growth, things that even most populist egalitarians still consider worthwhile.

Communications Bill—Partial Deregulation

The growing momentum for deregulation has found another industry: communications. The House Communications Subcommittee has released its long-awaited revision of the Communications Act of 1934, the basic statute authorizing the Federal Communications Commission and its controls over both telephones and broadcasting. While not proposing to restore a free market in communications, the bill takes a number of strides toward deregulation. Highlights:

- *Radio*—The bill would deregulate radio almost completely, granting licenses in perpetuity (though not establishing actual property rights in frequency assignments, as the free market would). Regulation would be limited to such technical matters as power levels and frequency limits. Stations would no longer have to provide equal time for "opposing views" or for political candidates.
- *Television*—TV station licensing would be deregulated 10 years from now; meanwhile, license terms would be extended from three to five years. The fairness doctrine would be abolished, and TV stations would no longer have to give equal time to candidates for federal or statewide offices, only to local candidates. On the negative side, new licensing fees would be collected from broadcasters, to pay for (1) the costs of regulation, (2) a loan fund for minority broadcasters, and (3) subsidies for public broadcasting.
- *Cable TV*—The bill would deregulate cable TV altogether. It would also permit telephone companies, for the first time, to offer cable TV services.
- *Telephone*—Here, too, the bill would make major changes, generally aimed at promoting competition. All local phone companies would be required to provide interconnection to all intercity carriers. AT&T would no longer be barred from offering data processing services (as it is now under an antitrust consent decree). On the issue of divestiture of manufacturing subsidiaries (like Western Electric), the bill would give parent telephone companies like AT&T a choice: give up monopoly status and keep the subsidiary, or retain the monopoly and dump the subsidiary. The bill would also direct the regulatory body to determine the extent to which one type of telephone service should subsidize another. "Connection charges" would be levied to fund these subsidies.
- *Bureaucracy*—The bill would replace the seven-member FCC with a five-member Communications Regulatory Commission with somewhat restricted duties, in line with the changes listed above.

The basic aim of the bill, according to Rep. Lionel Van Deerlin, the subcommittee's chairman, is to regulate the communications industry only "to the extent that marketplace forces are deficient." Though his judgment of where the marketplace is deficient may owe more to political than to economic considerations, the bill at least represents a start at deregulating the complex communications industry. Amendments over the next year could move the bill farther from—or closer to—the free market ideal.

Malpractice Revisionism

Most of what you think you know about the medical malpractice problem is wrong, according to two researchers for the Rand Corporation. Writing in the *New England Journal of Medicine* the researchers — a doctor and a lawyer-economist—found that:

- Less than a fifth of malpractice incidents result in claims, despite a perception of excessive suing.
- The average malpractice award—in 1974, for example—was slightly less than the medical expenses and lost earnings of the patient, despite the image of gigantic

settlements.

• A small percentage of physicians is involved in a large percentage of all claims successfully prosecuted, despite the fact that all physicians' malpractice premiums have been drastically increased.

But these facts, particularly the last, are not properly taken into account in the present malpractice insurance system, say the researchers, Dr. William B. Schwartz and Neil K. Komesar. Instead of singling out those physicians repeatedly found negligent, insurance companies raise rates across the board. As a result, the feedback signals provided by the system are too weak to deter carelessness. Patients end up losing two ways. Negligent doctors continue undaunted instead of either reforming or being forced out of business. And all patients must pay the higher fees doctors charge as a result of blanket insurance rate increases.

The solution is *not* to adopt no-fault insurance or abolish contingency-fee legal practices—both sometimes urged as malpractice reforms. No-fault is not necessarily cheaper and might weaken the deterrence of negligent doctors even further. Contingency fees enable less-affluent patients to engage a lawyer, thereby ensuring that more malpractice cases are actually purused. They therefore help to strengthen deterrence of malpractice.

The key to reform lies in changing insurance practices so that repeatedly negligent physicians bear the brunt of higher premiums. That way the marketplace would deal with the problem.

Useless Boards

When the government takes it upon itself to control entry into a profession and promulgate standards via licensing, people assume they are being protected from incompetents. In fact, what often happens is that those being regulated come to dominate the regulatory board, and the public is lulled into a false sense of security.

That's exactly what has happened in California, according to a special task force of the Consumer Affairs Department. Appointed by Governor Brown, the task force spent a year and a half studying 18 of the state's 39 regulatory boards. Its reports, released in May, constitute a scathing indictment of the whole system of licensing and regulation. For example:

• The Bureau of Employment Agencies leaves the consumer who uses these businesses "virtually unprotected" from fraudulent advertising, misrepresentation of available jobs and applicant qualifications, discrimination, and fee splitting.

• The main function of the Architectural Board of Examiners is "to support the profession of architecture... by protecting title and entry into that profession."

• The Certified Shorthand Reporters Board uses its power "to maintain a closed guild which excludes otherwise competent people from having a chance at the practice of their profession."

• The boards regulating barber colleges and cosmetology schools abuse students who wish to enter these fields by forcing them to obtain expensive training; the main beneficiaries are not members of the public but the operators of the state's 225 private cosmetology schools and 24 barber colleges.

• The boards licensing psychologists, social workers, and counselors license persons to practice psychotherapy who possess vastly different amounts and quality of training. The state license obscures these differences, to the detriment of consumers.

• The Contractors Licensing Board licenses incompetent contractors and does little or nothing to discipline them. Its examinations are outmoded, and the answers are widely available at schools which teach contracting.

• The Board of Dental Examiners "has been conspicuously incapable of protecting consumers from incompetent and negligent dentists." Last year it disciplined only eight dentists, even though the major liability insurer paid out over $1.4 million in 550 malpractice suits against dentists.

In the face of all this evidence, what did the task force recommend? Unfortunately, it did not call for replacement of government licensing with private certification by professional associations—a voluntary, marketplace type of solution that would restore consumer sovereignty. Instead, it recommended that the most flagrantly incompetent or industry-controlled boards be drastically overhauled. It did, however, recommend immediate abolition of the boards regulating shorthand reporters and landscape architects, and the eventual abolition of the boards of architectural examiners, geologists and geophysicists, and employment agencies—unless they can prove their worth within a certain time period. But until such groups as the task force come to recognize the *inherent* defects of regulation, as opposed to voluntary certification, their "reform" proposals are likely to remain mostly wishful thinking.

Sue Them!

The right of citizens to defend themselves against the depredations of bureaucrats has received two welcome boosts from the US Supreme Court. In two recent decisions the Court further decimated the traditional immunity of public officials to suits by citizens.

In a 7-2 decision the Court ruled that citizens may sue city governments that have violated their civil rights. Writing for the majority, Justice Brennan declared, "Local government bodies... can be sued directly... for monetary, declaratory, or injunctive relief...." The case arose over interpretation of the Civil Rights Act of 1871.

Three weeks later the Court ruled 5-4 that federal officials may be sued for damages in civil cases if they deliberately and knowingly violate the Constitution. In so ruling, the Court rejected the Justice Department's argument that officials should be absolutely immune from civil suits. "We see no substantial basis for holding... that executive officers generally may with impunity discharge their duties in a way that is known to violate the United States Constitution," wrote Justice White for the majority.

Milestones

• *Air Bags Deflated.* The US House has voted 237 to 143 to prohibit the Transportation Department from using any funds to enforce any requirement that air bags be installed in all automobiles. The House margin was so overwhelming that Senate conferees agreed to keep the ban in the Transportation Department's appropriations bill. The present DOT regulations call for air bags or automatic seat belts to be installed in all new cars starting in 1982. But they are now forbidden to enforce the regulations, at least as far as air bags are concerned.

• *Porn Cuts Crime.* Easy access to pornography has cut the incidence of most sex crimes in Denmark and Sweden. This is the principal conclusion of a new study by Prof. Berl Kutchinsky of the University of Copenhagen's Institute of Criminal Science. Kutchinsky also found that once the initial shock value had worn off, "Pornography has found its very modest place as something quite indifferent to most people, as entertainment and a spice of daily life to a minority." (Source: Reuter's, April 19, 1978.)

• *Eliminating Childishness.* If we're going to have censorship, at least it won't be based on childish concerns. That's what the US Supreme Court recently decided. By an 8-1 vote the Court held that when juries attempt to define "contemporary community standards" in deciding what books and films are obscene, they should consider only the views of adults, not children. The decision should mean at least a little less censorship of what people can see and read.

The New Philosophers Rock France

. . . young, radical, ex-Maoist — they have seized the intellectual initiative.

by William Bonner

God is dead;
Marx is Dead;
And I don't feel very well.
—Michel Le Brise

Socialism: born, Paris, France, 1848;
died, Paris, France, 1968.
—Bernard-Henri Levy

Ten years ago Paris was an occupied city. Squads of police and soldiers stood on every street corner. Busloads more lined up on the fringes of the Latin Quarter ready to rush in at the first sign of disorder. Public order was fragile on the Left Bank during the summer of 1968, and the government took great pains to preserve it.

Just a couple of months before—in May—a loose coalition of students, radical unionists, anarchists, and Maoists had openly and violently rebelled against the Gaullist government. Cobblestones of the boulevards St. Michel and St. Germain were pried up and piled into barricades. Trees were cut down. And for a short time, the government lost control.

But not for long, of course. Soldiers led by bulldozers soon destroyed the leftist ramparts and retook the Place St. Germain des Pres, thus crushing the uprising. The government lost no time in covering Paris streets with asphalt to prevent a resurrection of the barricades, and special holidays were declared to get people out of the city over those warm spring and summer weekends. Even the sale of gasoline was manipulated in order to encourage Parisians to leave when the government wanted.

After the brief rebellion was over, the only violence consisted of periodic skirmishes between small groups of leftists and the groups of police who regularly patrolled the Left Bank. These confrontations were more like sporting events than like actual attempts to overthrow the government. Rocks and bottles would be thrown at a group of police. (Empty bottles of a soda called *Pschit*, with a taste to match, were a favorite). The police, careful not to get separated from one another, would take up the Roman battle formation known as the "turtle," using their clear plastic shields as a shell. Smashing rocks and bottles against the police shields was such entertainment that soon a large crowd would gather—most to watch, but many to join in. At about this time, another larger group of helmeted police would come charging down the street to the rescue, beating the hell out of anyone who was too slow or too stupid to get away.

Facing page: Christian Jambet and Guy Lardreau, founders of the Proletarian Left

Another tactic of the frustrated revolutionaries was to throw objects and insults from a moving car. This was not without its hazards, however. Traffic flow in Paris is uncertain even in the best of times. More than one person got stuck in a traffic jam after attacking a group of police in this manner. The "flics" would run up to the car, yank out the poor bastards, and beat them to a pulp in the middle of the street.

To most people, even those sympathetic to the revolutionaries, the rebellion of 1968 seemed a hopeless project from the very start. There were few genuine grievances against the government, and the insurrection could not be expected to have much popular support. But the fact that even the Communist Party refused to join the rebellion was a source of great bitterness and disappointment.

The Communist Party in France was (and still is) large and well organized. On the local level, it had won many key positions. The CP was not about to jeopardize itself by taking part in a "spontaneous" uprising that it could not control. Most leftists knew this and couldn't have expected anything different. Yet to many, the failure of the CP to join the revolution was lasting proof that it had become a bourgeois party.

That was ten years ago. At that time, most of the "new philosophers" were in their late teens or early twenties. Many of them took part in the revolution. Others did not. But none escaped its effects.

Christian Jambet and Guy Lardreau helped to found a Marxist-Leninist youth organization in the caves of the Rue d'Ulm in 1967. They called it the Proletarian Left. And along with Andre Glucksmann and Bernard-Henri Levy they published a newspaper, *The People's Cause.* They all believed in Marxism—both in its moral superiority and its historical inevitability. As Philippe Nemo, another of the group, put it, "Marxist philosophy appeared to us as a conception of the world. It was the Truth. Of course, we had heard about what was going on in Moscow, Koestler and all the rest, but we didn't believe it. For us it was just talk."

The break with Marxism was not immediate, but it did come. By 1968 it had been more than a hundred years since *Das Kapital,* and still the workers had not thrown off their chains. The inevitability of Marxism had become something of a joke. The revolt had just failed in France. The Communist Party had sided with the government! And in July of 1968, the Gaullist government won the election by a landslide. What's more, in August, Russian tanks entered Prague. They were met by a courageous resistance that made the Paris uprising seem foolish and childlike by comparison. Not long after, Solzhenitsyn became known to the Western world. His accounts of the treatment given to Russian dissenters and hapless minorities gave the coup de grace to the notion of the moral superiority of communism. It was no longer possible to dismiss Stalinism as a perversion of Marxism. "Socialism is totalitarianism," says Bernard-Henri Levy. "As long as you are a Marxist, you will justify no matter what horror and no matter what evil in the name of historical providence."

In 1970 Jean-Marie Benoist wrote *Marx Is Dead.* Benoist was an assistant to Levi-Strauss at the College de France and a professor at a French lycee in London. He was in London during May of 1968, and it was there that he decided to commit his heresy. Benoist was an iconoclast and a bit ahead of his time. It took most of the new philosophers several more years to lay to rest the "bourgeois German."

By 1975 the transition was all but complete. Each of the seven or eight "new philosophers" had seen his burning bush by then, and each was ready to be labeled and marketed by a skillful

PR man. And it is to such a man—Bernard-Henri Levy, one of the new philosophers himself—that the group owes its reclaim. Levy is shrewd, talented, and enterprising. Moreover, he is romantically handsome. In 1973, after graduating from the prestigious Ecole Normale Superieur, helping Bangladesh in its war against Pakistan, and working as an independent journalist, Levy took a job as philosophy editor for the Parisian publishing house Grasset. First he tried to launch a new literary journal, which lasted only 11 days—just long enough for the bills to come from the printers. Then he published and promoted a collection of authors that he called the "new writers." That project had mixed results, but Levy learned his lesson. *New* is one of the magic words in France, just as it is in America.

Levy's next move was to call in his old friends from the Ecole Normale Superieur and the Proletarian Left and put them under contract to his publishing firm. He called them the "new philosophers." In addition to his job at Grasset, Levy was also responsible for book reviews in a Paris daily paper. This he used to promote the concept of a new philosophy and to praise the books published by his own company. He also masterminded a series of interviews, articles, and TV appearances for the group.

Within less than a year, the new philosophers were superstars. It is as if they had discovered the philosophers' stone. The press file that Grasset maintains on the group is so voluminous one can scarcely carry it. And their books have been breaking sales records—a fact that is particularly galling to other publishing companies. Levy's own book, *Barbarism with a Human Face,* has been on the bestseller list for months, as has André Glucksmann's *The Master Thinkers,* a ponderous work that won the essay prize from the Academie Francaise.

May 3, 1968, the Latin Quarter
Students protest university closing

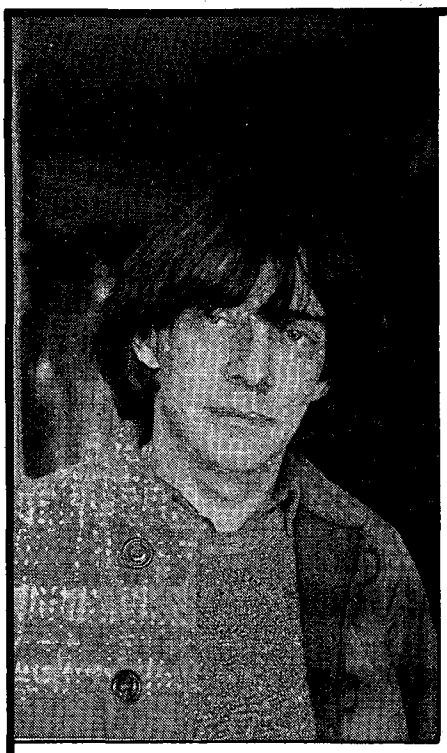
Philosophy is connected to politics, the saying goes, as lips to teeth. That alone may account for some of the new philosophers' success. Many communists actually welcome them. Since 1968 the CP has been as welcome in leftist circles as a case of herpes simplex in Plato's Retreat. The commies are pleased to see their fellow socialists taking heat. Francois Mitterand, head of the Socialist Party, refused to comment on the "new philosophy" during a TV interview. He said the subject was "too important" for offhand comment. Rightists and centrists, meanwhile, are pleased as punch to see former Maoists attack Marx. By doing so, the new philosophers are making anticommunists acceptable to Parisian intelligentsia. Even the anarchist journal, *Le Canard Enchainé,* which normally reduces everything trendy to quivering foolishness, has taken the new philosophers seriously. "These people trouble me," wrote Yvan Andouard, "and I'm not the only one."

Still, there have been a lot of new waves in French culture—new cinema, new novels, new realism—and it is puzzling how this one can attract such attention when, in fact, few people seem to know what it is, and those who do know, know that there's nothing new about it. The new philosophers themselves readily admit as much. Jean-Paul Dollé, author of *Desire for Revolution,* explains it this way:

> Philosophy is never new. There are always the same questions. What is new is that there is a need for philosophy. It seems to me that, not only in France, but in the entire Western world, political discussion is insufficient. All the great themes by which people live have been shown to be flawed. What we are doing is simply asking once again the age-old questions—the questions which have been posed by philosophers since the time of the Greeks. We are in a time of crisis. So we must ask again the fundamental question—the question of being. That's how I interpret it. This brouhaha has completely surprised me. I don't think any of us expected it.

Perhaps Dollé is right. Perhaps the new philosophers do fill a need. Many people are clearly disillusioned with the

> The anti-barbarian intellectual must be a moralist, and when I say moralist I mean it in the classical sense, that of Kant, Camus, or Merleau-Ponty. I am well aware of the secrets and tricks of the categorical imperative: but I prefer this little lie to that of historical superstition. That is, I prefer the spirit of courage and duty to the dismal cowardice of fatalism. I am not forgetting that God has been dead since Nietzsche, but I believe in the virtue of an atheistic spiritualism as opposed to the weakness and resignation of contemporary philosophy. I no longer believe in Man (as separate from society) and I should say that I agree with those from whom I have learned that the concept of Man is fading from the scene of intellectual activity. But I believe that without a certain idea of Man, the State falls too easily to the vertigo of fascism. I don't accord the least theoretical credit to what the Marxists call formal liberties, but practically, here and now, I cannot deny that they provide a barricade against the temptation to barbarity. Stated differently, we find ourselves in the troubling position of having only very uncertain and fragile political tools. Perhaps it is time to write moral treatises.
>
> —Bernard-Henri Levy, *La Barbarie a Visage Humain*



André Glucksmann

political formulas of the past. It is not surprising that they would turn to a "new philosophy," however vague it may be. In this sense, the new philosophers are to philosophy what Jerry Brown may be to politics: the incomprehensible is better than the reprehensible.

And the parallels with Jerry Brown don't stop there. A major part of the new philosophy is the *Small Is Beautiful*/Ivan Illich syndrome. Glucksmann, Levy, Dollé, and Benoist argue that adherence to grand schemes for the salvation of mankind—secular or religious—is an impediment to human progress and happiness. Instead, they claim that people should concentrate on small, manageable issues, handled one at a time. Problem solving should be done on a low level, with small groups of people coming together to tackle problems that directly affect them. Large institutions, they charge, are usually inefficient, corrupt, and dehumanizing. In this connection, the new philosophy is seen as a reassertion of humanist values over technological ones, and is compared to the new realism that tries to do much the same thing in art. The Union of Communist Students in France has referred to this trend as a "restoration of existential good health."

The new philosophy also has strong religious overtones. Heavy use is made of religious metaphors and symbols, despite the fact that most of the new philosophers are atheists. Evidently, one does not need to actually believe in God to appreciate religion. In fact, Nietzsche—who is revered by the new philosophers—is credited by them with reinforcing religion. Not bad for someone who once pronounced God dead!

In an interview conducted by France's Catholic newspaper, Bernard-Henri Levy explained that there are three ways of looking at the world—religious, political, or aesthetic. One need not be a Catholic to appreciate a religious interpretation any more than one needs to be an artist to appreciate an aesthetic interpretation. The important thing is to get away from the political conception of the world. Jean-Paul Dollé elaborates:

> Modern states, such as that which has existed in France since the Revolution, and all Western countries, have taken the place of God. Nietzsche said God is dead. I agree completely. That is to say that the transcendent no longer exists. That being the case, the state has tried to take its place. I am radically opposed to it. I will not admit that the state can take the place of God.

Dollé himself, like Heidegger, looks to poetry. "I believe," he says, "that at this time the only thing to do is to have an immense mass philosophical movement, a mass poetical movement."

The details of the new philosophy are difficult to pin down, as evidenced by the various positions with regard to religion. That is largely because its practitioners make such extensive use of images, metaphors, and analogies to prove their points. Each writer seems to have a slightly different view of what these things mean, and by consequence, each dishes up his own dog's breakfast. In general, the new philosophers reject Marx and all those associated with

Bernard-Henri Levy

him—Hegel, Engels, and Lenin. Instead, they stuff their philosophical rucksack with the old humanists—Plato, Socrates, Heraclitus—and with later existentialists such as Sartre and Camus.

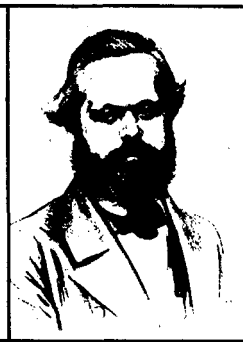
The philosopher with the strongest influence upon them, however, was Jacques Lacan, under whom several of them studied. Lacan's interpretation of Freud provided them with a key element of their philosophy. According to Lacan, each individual has the characteristics of society within him. These characteristics consist of three principal elements: the master, the slave, and the rebel—all of which are either derived from or reflections of the oedipal

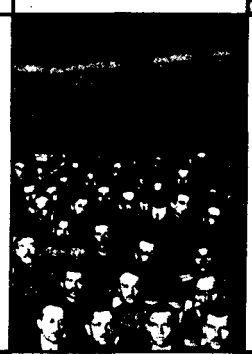
(Continued on p. 23)

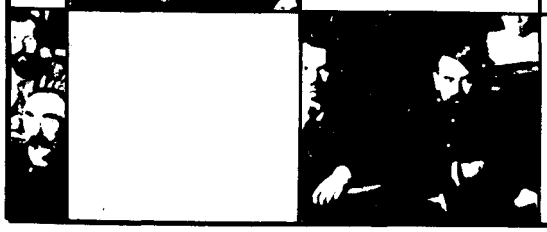
> If I must one last time go back over the route from which I came, sum up my methods and lessons, and reduce them to a "practical philosophy," I would conclude thus: I have done nothing more than pose, in my own way, the three celebrated questions of the "Chinaman from Konigsberg," the questions which he put before the philosophical trade time and time again. "What can I know?" I answered—clearly, I think—that I can know little except that the world is in bad shape, that its prophets of happiness often bring unhappiness, and that there is no greater danger than the pretender and the impostor. "What can we hope for?" I tried to say that we can expect little—if it is true that the Master is another name for the World, that as soon as one is overthrown another takes his place. The red princes are there now, waiting in the antechambers of power. "What should I do?" I have said in passing, but I say it now emphatically: brandish most highly what Descartes referred to as "a provisional morality" which for us takes the form of this simple commandment: resist that which promotes the barbarian menace.
>
> —Bernard-Henri Levy

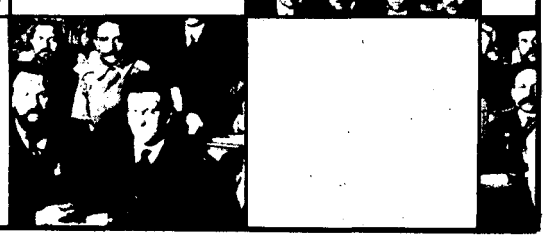
THE MAILED FIST VS THE INVISIBLE HAND

Three of early socialism's five key thinkers opposed the use of State power.









by William Chadwick

In the 20th century, socialism appears inextricably linked to statism. Whether the more radical and rigid kind of socialism usually denoted as communism or the milder variety found in Sweden and the United Kingdom and called democratic socialism, it is usually thought of in terms of expanding State power: nationalization of industries, widespread bureaucracy, high taxation—governmental controls on society and the individual.

In the previous century, however, socialism was no more automatically and intrinsically bound to statism than to, say, vegetarianism. A sizable faction of the 19th century socialist movement rejected not only State power but the State itself. It is well known that the Left has always been torn by dissension. Today, factions of socialists are at odds over how much State power there should be or what means are to be used to seize State power; but over 100 years ago, when the anarchist-socialist Mikhail Bakunin was ousted from the First International, the antistatist socialists and authoritarian socialists were strong contenders for the leadership of their crusade. And it is important to remember that out of the five most prominent socialist leaders of that era—Marx, Engels, Proudhon, Bakunin, and Kropotkin—three were anarchists.

How did the leading thinkers of what became known as the "libertarian" wing start with freedom and end up with socialism? How did their approach differ from that of the "authoritarian" wing of socialism—Marxists in general and Karl Marx in particular? The point of considering these questions is not to convert anyone to Proudhonism, Bakuninism, or Kropotkinism. (Of course, for those who are now State-socialists to become anarcho-socialists would at least be a step in the right direction and a boost for the cause of freedom—although not for the cause of sound economics.) As we will see, the anarcho-socialist thinkers under consideration here had certain inconsistencies in their stand on freedom. The point is, however, to recognize and respect the genuine love of liberty and hatred for oppression so evident in their writings, writings in their own way as stirring in spots as those of Frederic Bastiat or Benjamin Tucker.

Proudhon came first chronologically, but for the sake of comparison, we look first at Karl Marx.

MARX: THE STATE SOCIALIST

Karl Marx's basic ideas are generally well known: the dialectic of history, the "scientific laws" of socialism, the expropriation of the expropriators, and the like. One of his most famous ideas is that of the "withering away of the State." The unsuspecting, judging only from this Marxian idea—that in the future Marxist utopia there would be no State—might conclude that Marx was an anarchist of sorts, at least at heart—a "closet" anarchist, perhaps. Turn, however, to another of Marx's famous ideas, "the dictatorship of the proletariat," and it is evident that he was not.

Leopold Schwarzschild, in his biography of Marx, *The Red Prussian* (a very appropriate title), shows that Marx's mentality was anything but that of a latent libertarian. Schwarzschild's portrait of Marx, based on Marx's correspondence, is one of a man in love with power and force. Writing of the Marx of the late 1840's (the time of *The Communist Manifesto*), Schwarzschild notes that:

> More clamorously and wildly than ever he threatened all and sundry with the "mailed fist of the people," which was soon to break out. The mailed fist, power, armed force, dictatorship, war, world war, terror—his brain no longer seemed able to function along any other lines.

Schwarzschild points out that Marx used the phrase "dictatorship of the proletariat" many, many times in his private writings before he first put it in public print. Apparently it was a pet phrase of his.

Suppose, however, that one does not accept the Schwarzschild portrait of Marx-as-power-luster and prefers the standard view of Marx-as-humanistic-social-critic. Even so, one finds ample evidence in Marx's works written for public consumption that he fully embraced the State and State power as a means to the Good Society. For example, there is the *Manifesto*, coauthored with his soulmate, Friedrich Engels. The communist program put forth there, supposed to be "pretty generally applicable" wherever the Revolution is to take place, has the following features:

1. Abolition of property in land and application of all rents of land to public purposes.
2. A heavy progressive or graduated income tax.
3. Abolition of all right of inheritance.
4. Confiscation of the property of all emigrants and rebels.
5. Centralization of credit in the hands of the State, by means of a national bank with State capital and exclusive monopoly.
6. Centralization of the means of communication and transport in the hands of the State.
7. Extension of factories and instruments of production owned by the State; the bringing into cultivation of wastelands, and the improvement of the soil generally in accordance with a common plan.
8. Equal liability of all to labor. Establishment of industrial armies, especially for agriculture.
9. Combination of agriculture with manufacturing industries; gradual abolition of the distinction between town and country by a more equitable distribution of the population over the country.
10. Free education for all children in public schools. Abolition of children's factory labor in its present form. Combination of education with industrial production, &c, &c.

Of these ten planks in the communist platform, several are clearly of a statist nature; note the term *centralization* and the frequent mention of the State. Also interesting is that all are to be made liable to labor, clearly by State edict, and industrial *armies* are to be established. "Abolition" is a frequently used term; where something is to be abolished, obviously there must be a person or persons doing the abolishing, and it is fairly clear that those persons are to be the State—if not the old one, the new one of the Masses.

The *Manifesto* states that "the first step in the revolution by the working class, is to raise the proletariat to the position of *the ruling class*." Further, "The proletariat will use its political supremacy to wrest, by degrees, all capital from the bourgeoisie, to *centralise* all instruments of production *in the hands of the State*, i.e., of the proletariat organised as the ruling class" (emphasis added).

What, then, of the withering away of the State? Since it is obviously so useful an instrument, why not keep it around? Was Marx insincere about the future Stateless society? No, his belief was probably quite genuine, but one m· remember just how Marx regarded State. "The *State* and the *structure of society* are not, from the standpoint of politics, *two* different things. The State

is the structure of society." Change the structure of society in such a way that the State is no longer needed, and it will disappear. (But while it is needed to change the structure of society, use it energetically and frequently.)

In the same article (found in *Selected Writings in Sociology,* translated by T. B. Bottomore and edited by Bottomore and Maxmilian Rubel), Marx declared that the "existence of the State and the existence of slavery are inseparable"—clearly an indication that he regarded the State as *basically* an evil, albeit a necessary and often wonderfully useful one. "If the modern State," Marx continued, "wished to end the *impotence* of its administration it would be obliged to abolish the present conditions of *private life.* And if the State wished to abolish these conditions of private life it would also put an end to its own existence, for it exists *only* in relation to them." Clearly, this is only superficially anti-State. The anarchist hates the State per se, as an instrument of coercion; Marx obviously accepted the State as a tool but disliked the State of his own era because it was coercing the wrong people. "Since the State is the form in which the individuals of a ruling class assert their common interests," as Marx defined the State, the hoped-for classless society will have no need of the State, which will then eclipse itself.

Naturally, this kind of State socialism, imbued with the sanctioning of coercion and the love of power, would have to clash with the libertarianism of those socialists who sincerely detested coercion and loved freedom. Chief among this group, and perhaps the sincerest, was Proudhon.

PROUDHON: THE MUTUALIST

With Pierre-Joseph Proudhon, we leave State socialism and come to anarchism. "Although I am a strong supporter of order," Proudhon wrote, no doubt as a disclaimer of the common equation of anarchy with chaos or disorder, "I am in the fullest sense of the term, an anarchist." Proudhon saw anarchism as "the government of each man by himself—or as the English say, *self-government.*" In such a system, "business transactions and exchange alone produce the social order. In these conditions each man could call himself his own master, which is the very opposite of constitutional monarchy." These words reveal not only what anarchy meant to Proudhon but that he saw a natural order in the private world that interventions of government only disturb; here, he has more in common with Adam Smith than with Karl Marx. In fact, as George Woodcock shows in *Anarchism,* Proudhon was very much the individualist in the classical-liberal tradition.

Proudhon called his system Mutualism, from the economic system of *mutual exchange.* This, rather than collective ownership, would be the basis for the kind of society he advocated. Proudhon described mutualism as "the synthesis of the notion of private property and collective ownership."

> Its law... is service for service, product for product, loan for loan, insurance for insurance, credit for credit, guarantee for guarantee. It is the ancient law of retaliation, *an eye for an eye, a tooth for a tooth, a life for a life,* as it were turned upside down and transferred from criminal law and the vile practices of the vendetta to economic law, to the tasks of labor and to the good offices of free fraternity.

The anarchist hates the State per se, as an instrument of coercion; Marx obviously accepted the State as a tool.

Of special interest: Proudhon added, probably to contrast his system with that of the Marxists and other statists, that mutualism "demands no police force, no repression or restrictions, and can never be a disappointment or ruin for anyone."

The key to mutualism is expressed in the sentence: "All products will be paid for by products that have cost the same in effort and expense." The precise mechanics of it need not concern us here, for the most important question is not How will it work? but Who will enforce it? To his credit, Proudhon did not fall into the usual trap of summoning up a "People's State" to supplant the old one; no, the way to this ideal mutualist society would be through *associations* of business enterprises—not through the abolition of such enterprises by either the State *or* "the People." Proudhon called for the replacement of authority by contract (voluntary agreements or associations), in a manner similar to the laissez-faire liberals of the day. Proudhon was truly, as Woodcock calls him, "a social individualist."

His notorious answer to the title question of his most famous work, *What is Property?*—"Property is theft"—could mislead people into seeing Proudhon as a hard-line collectivist wanting to abolish private property outright. It has been pointed out that he actually wanted to do away with what he considered the usurious and therefore evil uses of property rather than property itself. (For this interpretation, see Preston King's *Fear of Power.*) But who determines what is usurious and evil? And who will do the abolishing? Here, one should keep in mind that Proudhon also said, "God is evil," but added, "I no more want to make it a crime to believe in God than I do to abolish Property." It seems reasonable to conclude that Proudhon remained true to his libertarianism, believing that once the State was abolished the natural order, no longer hindered by police-enforced law, would work itself out to a point where private property would *naturally* disappear. This is a far cry from the expropriate-the-expropriators rhetoric of Marx and Engels.

Marx read and liked *What is Property?* and wrote to Proudhon, inviting him to join in correspondence with Marx and other European socialists. Proudhon replied positively but cautioned Marx against developing a socialist "theology." "Let us not," he proposed, "set ourselves up as the apostles of a new religion, even if it be the religion of logic or of reason." And of particular pertinence to the question of the role of force is Proudhon's admonition against the revolutionary communism Marx advocated: "We must not suggest revolutionary action as the means would simply be an appeal to force and arbitrariness. In brief it would be a contradiction." He explained further:

> I put the problem in this way: *How can we put back into society, through some system of economics, the wealth which has been taken out of society in another system of economics?* In other words, through Political Economy we must turn the theory of Property in such a way as to create what you German socialists call *community* and which for the moment I will only go so far as to call *liberty* or *equality.* Now I think I know the way in which this problem may be very quickly solved. Therefore I would rather burn Property little by little than give it renewed

strength by making a St. Bartholomew's Day of property owners.

Does coercion rear its helmeted head in this passage? What Proudhon meant by "burning Property little by little" is not made explicit; he is certainly guilty of leaving himself open to the charge of letting statism into his philosophy via the back door. In light of his other statements, however, it would seem that by "turning the theory of Property against Property," Proudhon meant forming private (that is, noncoercive) associations of businesses in order to bring about socialism. Apparently the meaning was clear enough to Marx; according to Schwarzschild, he never wrote to Proudhon again.

BAKUNIN: THE REVOLUTIONARY LIBERTARIAN

Perhaps the most intransigent antistatist, anti-Marxist socialist of all was Mikhail Bakunin, a former Russian army officer. In 1855, he had been exiled to Siberia for his anarchistic activities, but he escaped and traveled the world. The leader of the anarchist faction of the First International, Bakunin was expelled from that august body by the Marxists in 1872. Certainly the personality differences between Bakunin and Marx had much to do with the schism, but far more important were the sharp philosophical divergences between the two collectivist leaders.

Bakunin's philosophical development had been greatly influenced by his friend, Proudhon. E. H. Carr, Bakunin's biographer, writes that Proudhon was "more than any other man...responsible for transforming Bakunin's instinctive revolt against authority into a regular anarchistic creed. It was more than twenty years [after their association in the 1840's] before that creed was finally formulated. But twenty years after their meeting, Bakunin still hailed Proudhon as his teacher and forerunner."

Another great influence on Bakunin was, oddly enough, Proudhon's (and later Bakunin's) philosophical adversary, Karl Marx, with whom Bakunin was also associated in the 1840's. One can see Marx's influence in Bakunin's view of a world governed by iron, scientific laws and in his strict materialism. In later years it became obvious that the libertarian socialism of Proudhon had won out, in Bakunin's mind, over the dictatorial communism of Marx—if, indeed, there had ever been a real contest.

A good example of Bakunin's anti-authoritarianism is found in his "God and the State." In it, he paraphrased Voltaire, saying, "*if God really existed, it would be necessary to abolish him,*" because, Bakunin held, man can never be truly free while a God or a belief in God exists. By *free*, however, Bakunin did not mean free from the laws that govern the universe: "We are absolutely the slaves of these laws." Instead, he meant free from man-made restraints; and because, in this context, he demanded absolute freedom, he absolutely rejected the authority of the State.

> Does it follow that I reject all authority? Far from me such a thought. In the matter of boots, I refer to the authority of the bootmaker; concerning houses, canals, or railroads, I consult that of the architect or engineer. For such or such special knowledge I apply to such or such a *savant*. But I allow neither the bootmaker nor the *savant* to impose his authority on me.

The essence of "God and the State"—and the essence of Bakunin's libertarianism—is to be found in this sentence:

> The liberty of man consists solely in this: that he obeys natural laws because he *himself* recognized them as such, and not because they have been externally imposed upon him by any extrinsic will whatever, divine or human, collective or individual.

Bakunin hated communism because it "is the negation of liberty and because humanity is for me unthinkable without liberty."

One would naturally expect such an ardent libertarian to clash with the State socialists; and clash he did, not only in the political struggles within the First International, but in the battle of ideas on paper. In an attack on the notion of the dictatorship of the proletariat, Bakunin called such a form of rule as reactionary as the same old State the masses had been trying to overthrow for years: "Between revolutionary dictatorship and the State principle the difference is only the external situation. In substance both are one and the same: the ruling of the majority by the minority in the name of the alleged stupidity of the first and the alleged superior intelligence of the second." And:

> Now it is clear why the doctrinaire socialists who have for their aim the overthrow of the existing authorities and regimes in order to build upon the latter a dictatorship of their own, never were and never will be the enemies of the State, but on the contrary that they were and ever will be its zealous champions. They are enemies of the powers-that-be only because they cannot take their places. They are enemies of the existing political institutions because such institutions preclude the possibility of carrying out their own dictatorship, but they are at the same time the most ardent friends of State power, without which the Revolution, by freeing the toiling masses, would deprive this would-be revolutionary minority of all hope of putting the people into a new harness and heap upon them the blessings of their governmental measures.

(Consider how strikingly applicable the above lines are to the "would-be revolutionary minority" of our own era, the New Left of the sixties and early seventies—including many self-styled "anarchists.")

Bakunin insisted that if it should come to pass that the masses could revolt and capture the State, they should at once begin to destroy it; the Marxists held that the State, once captured, should be strengthened and reinforced, and then, in Bakunin's words, "transferred in this form into the hands of its benefactors, guardians, and teachers, the chiefs of the Communist party—in a word, to M. Marx and his friends, who will begin to emancipate it in their own fashion."

Addressing the second Congress of the League of Peace and Freedom, a liberal organization, Bakunin declared in 1868 that he was not a communist but a collectivist. The distinction, according to him, was that collectivism is liberatarian in nature and communism is not; he hated communism because it "is the negation of liberty and because humanity is for me unthinkable without liberty." He explained, "I want to see society and collective or social property organized from below upwards, by way of free association, not from above downwards, by means of any kind of authority whatsoever."

That last sentence has a strong touch of Proudhon, and we can see in much of Bakunin's thought the same libertarian

socialism found in his intellectual mentor. Bakunin, however, went beyond Proudhon to advocate revolutionary terror—bombs and weapons-bristling barricades and the other violent trappings with which anarchism came to be so closely linked in the public mind—as a means of bringing about the Stateless society. Was this a deviation from Bakunin's stand against coercion? Was he not setting up himself and his followers as authorities, ruling men or trying to rule men by "the mailed fist of force"?

Study of his writings and pronouncements leads one to believe that the main and perhaps only detectable inconsistency in Bakunin's anticoercion, profreedom philosophy was in his position on inheritance. Bakunin advocated its abolition. Such abolition obviously would be an intrusion on the freedom of the person who wishes to bequeath property to his heirs, as well as the freedom of the heirs claiming the property bequeathed them. Apparently Bakunin either did not consider this or was thinking of inheritance only in terms of a feudal or semifeudal society such as his native Russia, where inheritance served only to propagate a system of property ownership founded and maintained by State force, where "private property" applied only to property held by the land-owning minions of the State. Would Bakunin have banned inheritance in the case of bequeathing *true* private property, that is, property not obtained through force or fraud? He should probably be given the benefit of the doubt in view of his other statements, particularly in "God and the State" and his address to the League of Peace and Freedom.

Revolutionary violence against the State, it can be deduced from Bakunin's view of authority on the whole, is justified because the State has no right to exist in the first place. If the State be no more than a gang of socially approved murderers and thieves, existing only by force and the threat of force, shooting or blowing up the members of such a gang would be as much self-defense as, and no more a violation of "free association" than, violent action taken against some private gang of murderers and thieves. As modern libertarian theorists like to put it, it is the *initiation* of violence, not the violence itself, that is immoral; and the State, by its very nature, is the initiator of violence directed against those it controls or seeks to control.

In sum, judging Bakunin and his philosophy as a whole, and at its best, Bakuninism was Proudhonism with a clenched fist—the fist directed, not downward, as with State socialism, but upward, at the State itself.

A by-no-means exhaustive bibliography presented for the benefit of those who would like to learn more about the anarcho-socialists.

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KROPOTKIN: THE ANARCHO-COMMUNIST

Proudhon to Bakunin to Kropotkin—there is a connection beyond the obvious fact that the three belonged to the same general political movement. There is a connection of personal acquaintance and intellectual influence. Proudhon knew and influenced Bakunin, and Bakunin in turn knew and influenced Peter Kropotkin. Unlike Bakunin, however, Kropotkin had a positive dislike of violence, even anarchist violence, although logically, as James Joll points out in *The Anarchists*, he felt compelled to accept it: he was not a strict, Tolstoyan pacifist. Unlike Proudhon, his vision of the ideal society was one of free communes with all holding property in common, rather than the bourgeois Proudhonian society with small property holders and merchants banded together in local associations.

This Russian prince turned anarchist, this soldier turned scientist, also saw, as Bakunin saw, certain natural laws operating in the universe. For Kropotkin, the basic rule of nature was evolution—not the fang-and-claw, survival-of-the-fittest evolution of the Social Darwinists, but a benevolent evolution leading to greater and greater free cooperation, *mutual aid,* among the species.

Beyond that, Kropotkin's thought can be seen as a continuation of Bakunin's, and thus of Proudhon's. For example, Kropotkin, like Proudhon, was very much an individualist and saw the growth of individualism—"the endeavors of the individual towards emancipating himself from the steadily growing powers of capital and the State"—as leading to increased socialism (which he invariably referred to as communism, although Bakunin had tried to make this term a synonym for State socialism). Socialism would evolve as individuals, gaining more and more freedom, turned more and more to cooperating with one another for the public good. This idea is set forth in his "Anarchist Communism," in which he declared, probably with Marx in mind:

> We are communists. But our communism is not that of the authoritarian school: it is anarchist communism. It is a synthesis of the two chief aims pursued by humanity since the dawn of history—economic freedom and political freedom.

Elsewhere, in a statement summarizing the ideal of his kind of socialism, Kropotkin stated that it "seeks the most complete development of individuality combined with the highest development of voluntary association in all its aspects."

Kropotkin attacked State socialism directly in a pamphlet called "Revolutionary Government." The only proper slogan for a true socialist revolutionary, he said, is "No government!" rather than "A Revolutionary Government!" The concept of revolutionary government was considered by Kropotkin a contradiction in itself—a "white blackbird." Further, Kropotkin attacked both proposed forms of revolutionary government: the elected, parliamentary kind and the revolutionary dictatorship variety—the former, because once elec-

ted the revolutionary officials would become typical government officeholders, interested primarily in their own power; the latter, because "this idea of a dictatorship is never anything more than a sickly product of government fetishworship."

Again, as with Bakunin, the problem of force arises. It is clear enough that Kropotkin, with his belief in mutual aid and free cooperation among emancipated individuals, saw his communism as a voluntaristic socialism. Yet this sunny utopian landscape is darkened on its horizons by the familiar cloud of coercion: in *The Conquest of Bread*, Kropotkin clearly advocated expropriation of property to achieve his ideal society. Whoever did the expropriation would ipso facto be that alleged "white blackbird," the revolutionary government, even if Kropotkin saw the expropriators as mutually cooperating individuals banded together in free brotherhood, voluntarily confiscating someone else's property. Obviously, there is a contradiction here.

Expropriation *could* be reconciled with the rest of Kropotkin's philosophy when the property has been acquired through previous State conquest and confiscation. As suggested in the case of Bakunin, perhaps Kropotkin was thinking here only in terms of his own semifeudalistic Russia, where the landowning class and the State would often have been one and the same. To confiscate in such a case would not be confiscation as much as it would be liberation.

On the other hand, perhaps there is no reconciliation. Perhaps Kropotkin simply contradicted himself. In that case, he would not be the first to advocate a "liberation" that in practice would be quite different from true freedom: think of the *liberté*-loving ideologues of the French Revolution. As with Bakunin, however, although more tentatively, perhaps Kropotkin should be given the benefit of the doubt. It appears that Bakunin and Kropotkin believed, however mistakenly, that property owners and the political ruling class, if not always one and the same, were in collaboration, so that an attack on the State would be an attack on Property, and vice versa. They (Kropotkin in particular) might have concluded that it would be impossible for a man to own land without that land having been first expropriated for him by the State. They did not make the distinction between the economic and political spheres, between Power and Market, a distinction Proudhon seems to have been aware of.

At any rate, Proudhon, Bakunin, and Kropotkin each in his own way advocated a socialism based on the inviolability of the individual and on an abhorrence of the rule of man over man. Whether or not each was consistent in this advocacy is another matter. Whatever the contradictions in their respective philosophies, they seem inconsequential compared to the rabid statism of Marx—more so in the present age, with the double specter of two Marxist police-state superpowers looming over the world. Marx won out in the political arena; but as powerful an influence over 19th century socialism as Marx undoubtedly was, he was not powerful enough to lead these three other influential socialists away from their individual beliefs in freedom. ◻

A free-lance writer, Mr. Chadwick lives in New York City. He reports that his western, Mackinnon, *"is now finding a publisher."*

Bonner

(Continued from p. 17)

complex. That being the case, it is hard to change the world in any major way. True revolution is impossible, say the new philosophers, since the only result of rebellion is merely to exchange an old master for a new one, with no guarantee that the new one will not be worse. (Curiously, while despairing of revolution, the new philosophers tend to glorify resisters and dissenters. It is not clear what route remains open to the resisters, however, if revolution is not possible.)

Human nature is thus loaded down with psychological baggage that cannot be checked. Real change can only come—at least according to Dollé—when the essence of man is transformed by a "general mutation." There may be many mutants walking the streets already, he says.

The new philosophy seems almost painfully pessimistic. For while its proponents are young and chic, they also have an irrepressible gift for overstatement. "Life is a lost cause," writes Levy; "happiness is an idea grown old." Comparing the new philosophy to films such as *Night Porter* and *Clockwork Orange*, both of which were phenomenally successful in Europe, critics have charged that it is just "an elegant decadence." Others have accused the new philosophy of being a form of punk or nihilism. *Humanité*, the Communist Party newspaper, said the "new philosophers" are just *poseurs* who are "neither new, nor philosophers." And cynics have remarked that the whole thing is nothing more than a tempest in a wine glass. They claim the new philosophers are merely settling accounts with their youth. There's a saying for it: "A man who is not a communist at age 20 has no heart. A man who is still a communist at age 30 has no head."

But a great many people disagree. They see the new philosophy as a welcome alternative to terrorism and punk (which Bernard-Henri Levy has called the "Apologie pour Pourri"—literally, the Apology for Rottenness). These people see the new philosophy as optimistic, a rebirth of classical humanism focused on the individual. "The time has come," says Levy, "to write new declarations of the rights of man, against the barbaric injustices of the nihilistic period in which we live."

For every negative there is a positive. If the new philosophers are viewed as pessimists, it is because they have torn down the idols that have dominated French philosophy and politics for more than 100 years. But by doing so they have cleared the way for new ideas. Here is how Andre Glucksmann put it: "We have had enough of the master thinkers and the little chiefs of philosophy. They make history, but in reality, their labors only break down individual resistance. They are the masters of submission to science, to revolution, and to the state. What is new about the new philosophy is that everyone tries to think for himself."

William Bonner, who is director of the National Taxpayers Union, was educated at the University of New Mexico, the University of Maryland, the Sorbonne, and Georgetown Law School.

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The First Amendment Under Siege

From Left, Right, And Center, Freedom Of Speech Has A Host Of New Attackers.

BY STEVE WRIGHT

Just over a year ago, a Florida jury deliberating a murder charge rejected the defense attorney's arguments that his client was "temporarily intoxicated" by so-called television violence; it found the defendant guilty. Notwithstanding this verdict, the widely publicized trial has heaped coals on the fires lit by critics of television violence.

Those fires have had their effect. In addition to the institution a few years ago of the "family viewing time" policy by the networks (in response to vague threats from both the Federal Communications Commission [FCC] and congressional leaders), the last few years have seen the gradual phasing out of most cop shows (generally regarded as the most violent) and their replacement by situation comedies and "family drama."

Pressure against television violence, however, is only one component of a wide-sweeping attack on the television networks—and, more broadly, on the press as such. Two other major components pertain to sex and politics.

Opposition to the inclusion of "sexual" material in television and radio programming has been taken up by numerous religious organizations—notably, the Reverend Jesse Jackson's People United to Save Humanity ("Operation PUSH"), which has publicly proclaimed its "crusade to clean up the airwaves." The pressure such groups can exert is felt, not only by the broadcast networks, but also by small cable-TV operators, who have found X-rated movies to be a powerful but legally dangerous spur to subscribers.

Meanwhile, legal battles over the application of the fairness doctrine and the equal-time provision to political issues have become progressively more frequent. News monitoring groups such as Accuracy in Media have documented television, radio, and newspaper news miscoverage and bias, have written letters to editors and producers, and have initiated FCC actions based on the fairness doctrine. One consequence of this kind of legal action has been the virtual disappearance of advocacy advertising. When Texaco, for example, tried to buy ad time three years ago endorsing vertical integration of the oil industry, only one station consented to run the commercial—and it was subsequently forced to give free air time to the "Energy Action Committee" for a reply.

USING THE BIG GUNS

The point is not that media criticism exists; in some cases it is richly deserved. The point is that television's critics have not confined themselves simply to criticism but have taken *legal actions,* through the FCC, in an attempt to use force against the networks to secure their goals.

One of the most devastating tools employed by such critics is the license challenge. Under federal laws, all broadcast stations must periodically petition to renew their broadcast license. If another group enters its petition for the license, the license holder not only has to prove that its own record satisfies FCC requirements for local-affairs programming, public access time, news coverage, etc., but must also answer any specific charges brought by the other petitioner, on pain of losing its license to the challenger. In 1966 a crucial court ruling held that a challenging "citizens group" didn't even have to be capable—technically or financially—of running the station for the control of which it was petitioning. Since then, such challenges have become increasingly popular. As one recent case showed, even when the challengers had repeatedly failed, the station owners' inability to plan more than a few years ahead and the prospect of more legal trouble in the future caused them to sell their station.

Legal action against the broadcast media does not stem only from citizen pressure groups. In the last few years the FCC and federal courts have also acted on their own to order the divestiture of many radio and television stations. In one controversial case, a Washington, D.C., news group was ordered to divest its broadcast facilities from its print publications. Although an early June Supreme Court decision reversed this order, it left standing an FCC policy to prevent newspapers from acquiring broadcast outlets in the future. Nationwide, in the name of broadcast diversity, a number of joint AM-FM radio stations have been ordered to create separate management and programming formats.

Finally, television and radio *advertising* is also under attack. Cigarette advertising was outlawed several years ago. Now, on the heels of growing criticism of advertising directed toward children—particularly "junk-food" advertising—the Federal Trade Commission (FTC) has begun investigations and has threatened actions ranging from requiring equal-time counteradvertisements to outright bans.

FREE SPEECH CURBED

Other legal actions against the press have not been confined to the broadcast media. For example, news reporters have recently become increasingly subject to "gag orders"—court rulings forbidding the reporting of events in a particular trial or other court proceeding.

Pressure on the print media has taken a number of forms. There are, first, outright attempts to regulate the press. Only four years ago, for example, the state of Florida tried to enact an "equal time" law for newspapers; it would have required a newspaper to give free space to political candidates editorially criticized by the paper. That law was ruled unconstitutional, but the trend continues. Currently the Securities and Exchange Commission (SEC) has asked for authority to regulate investment advisory newsletters. It wants to force public disclosure of the finances of such newsletters, as well as regulate the qualifications of their editors for such work. In addition, several states, which retain the authority to license these publi-

cations, have recently increased the license fees drastically, forcing some newsletters to consider closing down.

Antitrust laws have also been used to threaten the press and freedom of speech. For example, following widely publicized newspaper purchases two years ago by the Australian businessman Rupert Murdoch, there was consideration of a possible congressional investigation into the activities of newspaper tycoons. In addition, some businessmen have been warned that, since prior publication of projected price changes may help a competitor to change his own prices, they may be subject to price-fixing charges. Informal discussions between engineers employed by competing companies have also been subjected to this interpretation, and recent antitrust law makes those involved subject to *jail terms* if convicted. The prospect has even been raised that professional colloquia among engineers could for the same reason be ruled altogether illegal.

Another broad area of regulation over freedom of speech is campaign financing legislation. The 1974 Federal Campaign Financing Act, among other things, set upper limits on corporate and individual monetary contributions to certain federal political campaigns and allocated federal tax funds for campaign purposes, making every taxpayer the involuntary supporter of every funded candidate. A Supreme Court decision reversed some aspects of the law, but corporate limits and taxpayer funding are still in force.

A recent Massachusetts state law prohibited corporations in the state from supporting or commenting upon state referendum issues that did not "directly" affect the interests of the corporation. This law was expressly backed and passed to prevent Massachusetts businessmen from using their corporations' money to fight graduated income tax referenda. One effect of the law had been the refusal of some businessmen to even comment on referenda without prior legal advice. This law was ruled unconstitutional last spring, although on shaky grounds.

Finally, the traditional First Amendment whipping boy—pornography—continues to face regulation. Following the 1973 Supreme Court decision that gave community opinion the right to arbitrarily ban what it regards as "obscene," there have been numerous obscenity convictions around the country. One New York pornographer has been convicted of obscenity for violating the "community standards" of Wichita, Kansas. *Carnal Knowledge* (a movie that, ironically, far from exciting any "prurient interests," is a cynical pandemic attacking romantic relationships as neurotic role playing) fell prey to censors in Georgia. Most recently, a Columbus, Ohio, district attorney found his way to fame by getting a Cincinnati pornographer convicted on an obscure "racketeering" indictment.

In some of these cases, such as the imposition of "gag rules," the issues involved are complex. But in most the issues are clear-cut, and when contemplating the whole ensemble, it is evident that it adds up to an across-the-board—if piecemeal—attack on the First Amendment, on the right of a free press and free speech.

WHY CONTROL THE MEDIA?

What can be the rationale for such an attack? Many of its leaders *must* be aware that they are asking for controls on the press; why do they think they can (to say nothing of *should*) get away with it?

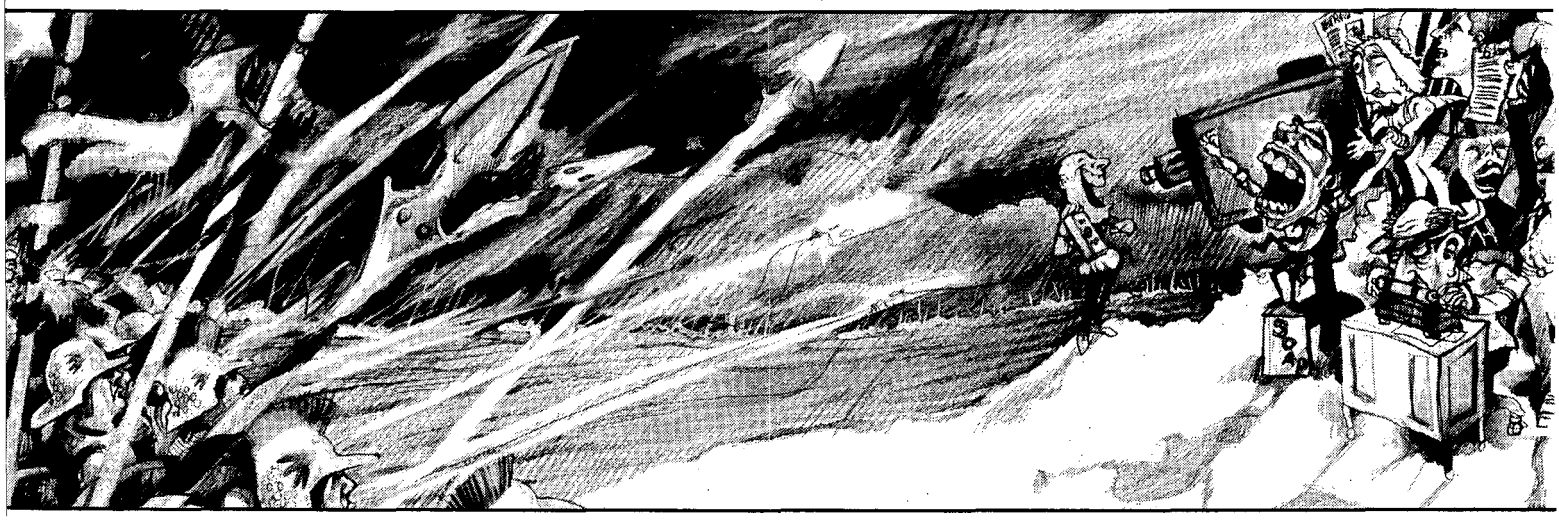
For the airwaves, the answer is well known. The theory behind the fairness doctrine and the equal-time law is that the airwaves, because they are limited, are *public property*, being "worked" for the public good by what is to be regarded as a "concessions" industry. "Public interest" in how they are "worked" takes precedence over the freedom of speech of broadcasters. As a secondary theme, there is the argument that, somehow, freedom of speech just doesn't apply to "commercial speech" such as advertisements. Michael Pertchuk, President Carter's appointed head of the FTC, sounded both lines in a *TV Guide* interview (November 12, 1977) concerning children's advertisements:

> What is the justification for spending hundreds of millions of dollars on advertising, which is carried by licensees on the public airwaves and directed at 3- and 4-year old kids? What is the social benefit of this?

And in answer to a question on the First Amendment:

> I think that the First Amendment rights of an adult to have access to information an advertiser wants to give him are really different from the First Amendment right of a child not to be bombarded by certain kinds of ads. The First Amendment is not an absolute document, especially when applied to commercial speech.

The "limited airwaves" argument, however, doesn't go over so well any longer; in fact, the premise that channels are significantly limited has been thoroughly refuted since the ultrahigh frequency (UHF) spectrum was opened up some 20 years ago. As MIT political science lecturer Edwin Diamond pointed out in a two-part *TV Guide* article (October 29 and November 11, 1977), US broadcast outlets already outnumber daily newspapers by a factor of five-to-one, and cable-TV opens up a virtually unlimited prospect for more stations. Cable-TV, incidentally, although it is not limited by the number of available channels, and although it involves no interference with the airwaves, is *also* controlled by the FCC and is forbidden in some areas. In the face of the collapse of the "limited channels" argument, critics of the networks have



fallen back on a very dangerous but popular idea that could lead to further regulation of the whole press industry: the idea of the "public right to know."

THE "RIGHT TO KNOW"

This idea is the formulation usually given to a "free" press in collectivist political theories. A "free" press, in these theories, is not the right of individuals to spread their ideas through their own efforts but the "right" of society to "know," to have a kind of general access to facts and (usually) to the major viewpoints on any controversial issue. According to this principle, the needs of society, not the decision of the publisher, are the proper determinant of the contents of the press.

The "right to know" was a major factor in a recent Supreme Court decision that ruled unconstitutional a ban on professional advertising by the American Bar Association (ABA). Why this ban constituted censorship is not a completely obvious issue and calls for a word of explanation. Normally, if one wanted to join a professional organization, one would have to choose to abide by the rules of the organization and no issue of free speech or censorship could arise. The ABA, however, is not a fully private organization. Membership in many of its state affiliates is a legal requirement for practicing law, thus making the ABA, in part, a modern-day equivalent of the medieval guilds and making its *internal rules* the equivalent of legal requirements for law practice. With government force behind it, the ABA advertising ban *did* constitute censorship and a blatant violation of a lawyer's rights. This case was not presented before the Court, however, as an issue of a lawyer's right to advertise his rates. Advertising, after all, is "commercial speech," which has traditionally been denied free speech rights. Instead, the suit was brought by "consumer advocates" who claimed that the public has a "right to know" what rates are being offered. The Supreme Court agreed.

The "right to know" approach is also seen in FTC Chairman Pertchuk's remarks quoted above. The First Amendment, for Pertchuk, does not pertain primarily to the advertiser's freedom, but to the right of the listener "to have access to information."

As a final example, the Supreme Court decision on the Massachusetts referenda campaign law mentioned above was also based on the public's alleged "right to know." The Court ruled that there is significant "social interest" in what corporations have to say on public issues.

The ABA case illustrates what's wrong with the "right to know" approach to the First Amendment. What if most lawyers *voluntarily* agreed not to advertise their rates? Logically, the "right to know" would mandate their disclosure, voluntary or involuntary. Who would publicize the resulting information, and at whose expense? Logically, the "right to know" would mandate that somebody do it, voluntarily or involuntarily; and that somebody pay, voluntarily or involuntarily. The "right to know" requires for its implementation the violation of the individual rights of the lawyer, printer, and taxpayer and can be no right at all. That this prospect has not occurred is due only to the fact that there are enough lawyers only too happy to advertise their rates.

In such broader contexts as journalism as such, however, there is no lack of *unheard* facts or points of view; and there are no objective criteria for determining which of them should be legally forced into the evening news or the morning paper. It is these broader contexts that *are* in danger of eventually coming under control via the "public's right to know." As usual when First Amendment rights are under attack, it is the conservatives who are leading the charge. Liberals like Eric Sevareid are saying:

> I have never understood the reasoning of those critics who seem to be saying that broadcasting will enjoy full rights under the First Amendment when it is worthy of them. Constitutional rights do not have to be earned; we were all born with them.

In contrast, it is a conservative, Kevin Phillips, who has been laying the groundwork for a controlled press.

Phillips was a frequent contributor to the discontinued *TV Guide* "News Watch" column, and his columns were marked for the frequency of his appeals to the fairness doctrine and calls for the divestiture of the big networks. In one of his last columns (November 12, 1977) he provided the philosophic foundation for these appeals—a minor variant on the "right to know" theme.

> From a traditional perspective, it's ironic that conservatives, in other situations the first to support and maximize private-property rights, are arguing for interfering with the "private" prerogatives of the networks, but I think they're correct—there is too much of a "public" interest here to permit exclusively private decision making.... Throughout US history, when "private" businesses of a certain sort—from banks and railroads to public utilities—have achieved a critical public importance, they have been subjected to increasing regulation in the national interest. Now it would seem that the information-and-opinion industry is coming under the same guns, notwithstanding self-interested assertions that it ought to be untouchable under the First Amendment.

These remarks conceal a multitude of sins—for example, Phillips' ad hominem reference to "self-interested assertions." But his central argument is a standard statist line that would justify (and, as Phillips reminds us, has been used to

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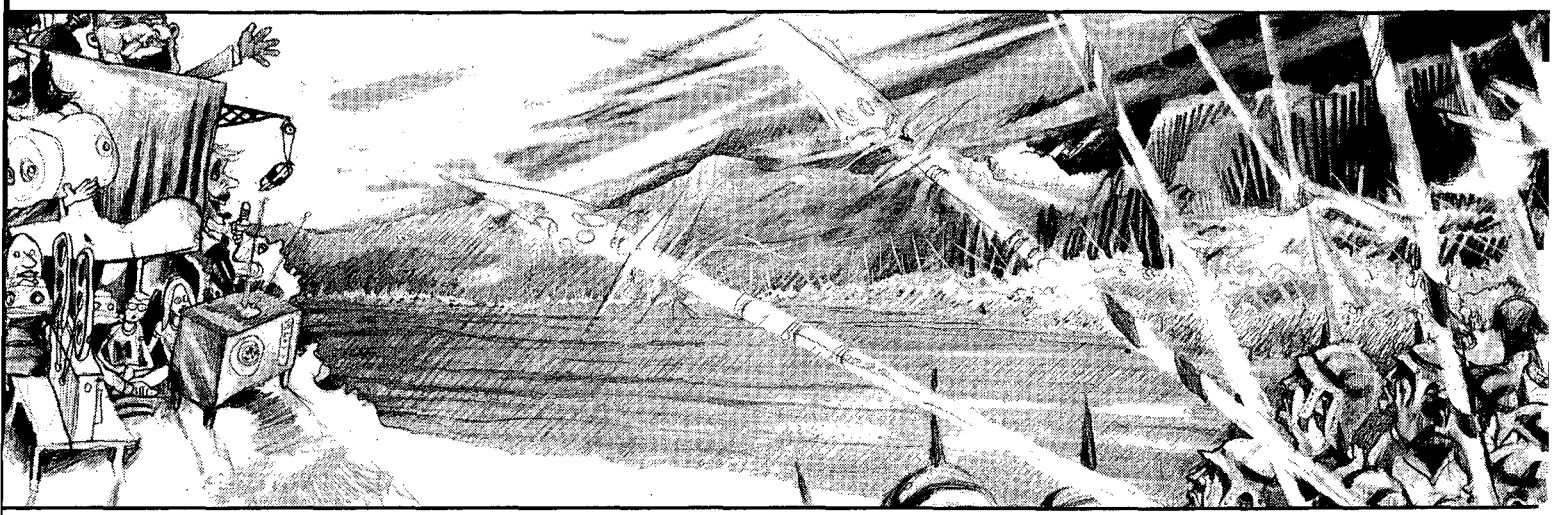

How Federal Railroad Policy Got Derailed

In Conrail and the 4R Act, Congress has created rolling disasters.

BY WILLIAM D. BURT

The federal government's two-year-old railroad policy is coming apart at the seams. Congress has already moved to patch it up, and major policy initiatives will probably be forthcoming within a year.

The Railroad Revitalization and Regulatory Reform Act of 1976, hailed by some as deregulation and scorned by others as a prelude to railroad nationalization, set out to rehabilitate and restructure the railroads "... so that this mode of transportation will remain viable in the private sector of the economy and will be able to provide energy-efficient, ecologically-compatible transportation services with greater efficiency, effectiveness, and economy." A combination of federal money and reforms was aimed at reorganizing seven bankrupt Northeast railroads, easing the regulatory burden, and slimming down the railroads' overbuilt network of trackage. The results have been somewhat less than overwhelming.

CONRAIL COMES BACK FOR BILLIONS MORE

The main challenge confronting the drafters of the "4R" Act was the dire situation in Northeast railroading, where decades of neglectful and punitive government policy had culminated in the bankruptcy of seven lines, including the mammoth Penn Central. Previous legislation, the 1973 Regional Rail Reorganization Act (or "3R" Act), had designated a United States Railway Association to come up with a unified reorganization of these railroads, but most of the particulars of USRA's plan remained unclear as of 1975. The final system plan and the 4R Act emerged in tandem, and what resulted was a Consolidated Rail Corporation funded with federal "investments" of $2.026 billion. That amount proved too little, for in April of this year Conrail came back to the federal well for an additional $1.283 billion in assistance and possible federal guarantees for $959 million more to be sought on the private loan market.

At this writing Conrail appears set to receive $1.274 billion amid USRA's announced fears that as much as $3.8 billion over and above the original federal "investment" could be needed. Some of the assumptions used in Conrail's latest projections are, if defensible, still optimistic. The railroad expects to reduce labor costs, which currently consume over 60 cents of every revenue dollar, by $500 million through 1982. Conrail assumes that if the 4R Act's employee protection funds run out, as seems likely, protection payments will not have to be paid by the company; likewise, that new taxes to prop up the Railroad Retirement Fund will not burden Conrail. Its management is counting on new measures to ease railroad regulation, and they assume that compensation paid by states and localities for Conrail operation of commuter trains and light-density

branchlines will cover full costs.

If these assumptions don't hold up, the likelihood that the railroad will repay the government's "investment" and return to the private sector, as USRA intended, is greatly diminished. And the railroad's poor performance to date makes optimistic assumptions seem all the more unrealistic.

We can no longer simply attribute Conrail's shortfall to rail "mismanagement." For one thing, Congress has to shoulder the blame for some mismanagement of its own. When the 4R Act was signed into law in early 1976, Congress had narrowed down the proposed reorganized rail systems to two. The first choice, known as the "Three System East," would have sold strategic portions of the bankrupt rail lines to the Chessie System and the Southern Railway, two solvent railroads which compete with Conrail. The second choice was "Unified Conrail," incorporating most of the bankrupt trackage. Labor negotiations necessary for the Chessie and Southern transactions never came off, and Unified Conrail became reality on April 1, 1976, boosting Conrail's up-front costs from $1.85 billion to $2.026 billion. In the ensuing Congressional appropriations process the increased cost was simply robbed from a $250 million Conrail disaster fund included in the 4R Act's original authorization of $2.1 billion—leaving only $74 million, none of which was appropriated. Then $350 million worth of disasters hit: the Johnstown flood, the longest coal strike in history, and two hard winters. Up went Conrail's "shortfall."

Conrail has largely thrown off the "mismanagement" onus. Recruiting from seven Northeast railroads and outside industry, Conrail has assembled a respected management group who seem to have staked their personal reputations on Conrail's return to the private sector. The railroad accomplished its April 1976 transition without the clashing gears which marred the 1968 merger of the New York Central and Pennsylvania railroads into the Penn Central; this time the computers talked to each other, cars were kept on the move, the bills were paid. During 1976-77 Conrail's operating deficit approximated the $567 million forecast for the period (though the long-term projections worsened), and the railroad outdistanced the track rehabilitation goals set for it. Shippers have been expressing hesitant praise for Conrail's attentiveness, and rail competitors are publicly irked by Conrail's improved marketing.

PERFORMANCE STILL SAGS

But despite management effort, performance has continued to sag. Since April 1976 the fraction of locomotives out of service has mounted from 13 percent to 22 percent, and for freight cars the figure rose last year from 12.8 to 13.8 percent. Conrail's freight car utilization—a key indicator of the productivity of money invested in rail operations—has slipped 13 percent from projected levels. The railroad does not appear likely to achieve the 28 percent improvement in utilization which USRA originally targeted for 1981. Conrail and USRA now agree with those who predicted in 1975 congressional testimony that the 28 percent target was optimistic.

Such errors cost. In Conrail's recent business plan for the period 1978-82, cash flow from operations falls short of USRA projections by $1.8 billion. About 25 percent of that shortfall owes to the lower than expected number of serviceable freight cars inherited by Conrail, and another 25 percent to traffic levels which are now missing USRA targets by about 10 percent. The remaining half of the shortfall results from sagging car utilization. Even though the railroad's volume is down, the lower utilization rate requires a higher number of freight car acquisitions. The railroad is also forced to pay out large sums of money to "rent" other railroads' freight cars detained on Conrail, a fleet of cars that often exceeds the number Conrail owns. All agree that substantial gains in car productivity must be racked up if Conrail is to avoid further sizeable shortfalls. Princeton University's transportation center, testifying before Congress in 1975, predicted that if USRA's projected 28 percent utilization improvement were not to be achieved Conrail could need as much as $5.38 billion from the government.

Conrail's critics, bolstered by a recent General Accounting Office report on freight car productivity, are demanding that the railroad immediately implement a new operations control system and improvements to shops and yards which could speed the flow of cars. Conrail, now in the midst of reorganizing managerial responsibility for car utilization and set to spend the first $14 million towards the operations control system, couldn't agree more that an integrated control system, computerized routing, and rehabilitated facilities would all be helpful. But officials are still plainly a bit taken aback by the complexity of instituting the $60 million system demanded. They see it taking four years to implement; no benefits will be realized until half the railroad is covered. Likewise, various improvements to physical facilities have been delayed due to the complexity of the cost/benefit tradeoffs involved.

USRA fears Conrail could need as much as $3.8 billion more than planned.

All of which raises a question largely buried under the 4R Act's rhetoric: Is Conrail too big to be managed? Are good intentions, a skilled management, and massive rehabilitation enough to make a 17,000-mile, 90,000-employee railroad work?

POLITICS VS. ECONOMICS

This is a question which haunted those who drafted the 4R Act and its predecessor legislation. Congress wanted it both ways—political forces wanted the reorganized railroads to emerge as a company or companies which could survive on the open market, but no politician was content to let the market determine the size and structure of the rail reorganization. The same marketplace auction of railroad assets which would have conclusively defined the efficient shape of the reorganized railroads would, after all, have also delivered the *coup de grace* to approximately 12,000 miles of little-used track in the Northeast. Rather than permit this, Congress created USRA and instructed it to produce a plan for a "competitive" and "efficient" rail network.

Somewhere out there lay the nucleus of the rail system which the open market would truly sustain. Larger or smaller than Penn Central, one or several companies—which, we do not know. The bankrupt railroads and their predecessors could hardly serve as models for the reorganization; one cannot even call them the product of a free market. What seems to be relevant to today's market for railroad services—a highly decentralized management focused on profit-and-loss between individual terminals—could perhaps thrive in either a large or small railroad, but not with federal rules and dollars propping up old ways of operation. In any event, only a truly free market could have produced a sustainable reorganization.

Political forces, on the other hand, inexorably led USRA to settle for tinkering with old railroad maps. Under continuing pressure to reduce federal investment in "duplicating" railroads USRA ultimately acquiesced in the obvious: Unified Conrail. Now Conrail suffers the problems of size; it cannot get managerial decisions consistently implemented down the line. One industrial shipper quoted recently in a *Railway Age* traffic poll echoed many Conrail shippers when he said, "The attitude is good, but the system is not responsive to customer needs because of the size of the organization."

What then? Perhaps the "continuing reorganization" provided for in the 4R Act and hinted at in Conrail's recent business plan. The railroad's increasing willingness to work with shippers owning their own trains and the ongoing management reorganization both tend towards greater decentralization of profit responsibility. One major USRA study of Conrail freight operations suggests that the net effect of this should be for marketing departments to break away from the physical structure of Conrail, link up with similar departments of other railroads, and organize interline freight services independent of company route structures.

How Conrail fares will affect the taxpayer long after the present appeal for additional funding. Waiting in the wings are the owners and creditors of the estates of the seven bankrupt railroads who were, in exchange for 48,000 miles of track, 400,000 acres of land, 185,000 pieces of rolling stock, and 4,000 buildings, given preferred and common Conrail stock subordinated to the government's prior claims. Accompanying the

"We do not want, nor do I believe we need, a 'Conrail West.'"—Brock Adams

stock are "certificates of value" which guarantee that in a federal court proceeding still a decade away the holders will be given at least a "constitutional minimum" of compensation for assets conveyed to Conrail. If Conrail performs poorly and their Conrail stock commands little, the US Treasury must make up the difference between the stock's worth and the constitutional minimum promised by the certificate of value. The amounts involved remain unclear, of course—depending as they do upon current litigation surrounding the legal minimum valuation of railroad assets and on Conrail's performance. While the court handling the matter recently described creditor claims in the billions of dollars as "fantasy," the final amount could easily be several times the $685 million allocated by USRA for conveyance assets.

REGULATORY REFORM LAGS

Analysts in the Ford administration saw as few others did that the prime cause of the Northeast railroad problem was

Legislation has already been introduced to put Amtrak on the dole permanently.

regulation. To secure the Conrail reorganization and prevent future railroad bankruptcies elsewhere, they resolved to lift some of the Interstate Commerce Commission's burdensome restrictions, in the second of the three major thrusts of the 4R Act. As the legislation approached passage, an internal Department of Transportation memorandum announced "reasonable success" in preserving the bill's "regulatory reform" from frantic attacks by various transportation interests. The memo writer continued, though: "The ICC is unhappy with the whole thrust of the legislation and would be most pleased to see it undone... the Commission is left with a large amount of discretion which could be used to frustrate the overall objective of the legislation.... We must...await the ICC's action in implementing the various reform provisions before declaring a victory."

This proved to be prophecy. With only a handful of railroad freight rates having been filed with the ICC under the reformed procedures, DOT lamented in October 1977 that "the caution of the railroad industry in using the new provisions, the time required to promulgate new standards and procedures, and the interpretations given certain crucial 4R Act provisions by the Congress, preclude a full test of the attempted reforms within the 20 months since passage of the Act." DOT criticized the ICC for implementing reform provisions "in ways that discourage, rather than encourage, the railroads from using the ratemaking flexibility the Congress sought to accord them."

What were these regulatory reforms, and how were they derailed? First, railroads were freed to lower freight rates down to the variable costs of providing the service, and amendments were made to the ICC's authority which prohibit the agency from engaging in "umbrella ratemaking"—the practice of holding up one carrier's rate levels to protect the traffic of a competitor. On the other side, the 4R Act removed the Commission's authority to set maximum rate levels on traffic where effective competition is judged to exist. The most remarked reform was the creation of a "no-suspend zone" in which railroads could freely adjust individual rates up or down by as much as seven percent per year. Originally intended by DOT as a quick-and-easy way to offer rate flexibility while the ICC was churning out revised procedures to implement the other reforms, and cast as a permanent, gradually widening zone of ratemaking freedom, the no-suspend zone was almost killed in the House of Representatives and emerged in the 4R Act as a two-year experimental zone applicable only where "effective competition" exists.

The 4R Act also set time limits for ICC investigation of proposed rates and reallocated the burden of proof in many cases to those who seek suspension of rate proposals. The Commission was required to promulgate clear standards and expedited procedures for hearing cases involving seasonal, regional, or peak-period rates; rates for ancillary rail services; rates involving capital investments of $1 million or more; and intrastate rates.

While these reforms add up to a noticeable limitation of the ICC's traditional power to suspend rail rates because they are "unreasonable," the 4R Act conspicuously avoided tampering with other ICC authority to throw out rates which it judges to be "discriminatory," "preferential," or "prejudicial." But the worst impediments to the so-called "new era in competitive pricing" which Congress proclaimed in the 4R Act seem to have resulted from ICC reluctance to part with authority. Foremost of the examples is a still-running imbroglio over "market dominance."

The 4R Act required the ICC to establish that a railroad possesses "market dominance" before proceeding to consider disallowing the railroad's proposed rate as being unreasonably high. Though the basic idea was to limit the ICC's suspension power—market dominance *had* to be established and did not by itself constitute sufficient evidence for suspension—the provision unfortunately ended up illustrating some of the pitfalls of trying to "reform" rather than eliminate regulation. The market dominance test dragged into ICC practice for the first time all the ambiguities and contradictions of latter-day antitrust. Rather than define market dominance in the 4R Act, Congress relegated the matter to ICC rulemaking.

In March 1976 the Commission proposed standards which according to DOT studies would have yielded findings of market dominance in 90 percent of all proposed rail rate hikes. Seven different fact patterns were set forth, any one of which would have preserved the ICC's authority to intervene on market dominance grounds. Following a storm of criticism, the Commission in August issued new standards which looked not much different. Finally in October 1976 the ICC formally adopted market dominance standards. One of these was based on market share, but precluded consideration of potential competition, of competition by unregulated private carriers, of

geographic competition among producers of the product being hauled, or of competition between the product being hauled and its substitutes. Another standard hinged on an arbitrary rate/variable cost ratio which the ICC, strangely, had made progressively *more* restrictive throughout the course of the hearings. A final one rested on the existence of shipper investment in rail equipment, although the 4R Act had already preempted this area by providing special rate freedoms for services involving capital investments. Charging that the ICC's ruling was capricious and "so vague as to be irrational," the Department of Transportation, the Federal Trade Commission, and the Department of Justice all sharply criticized the ICC market dominance stance in the US Court of Appeals. There the matter festered, until recently, when the ICC won its case. In words which must rankle those who plugged for regulatory reform, Judge Harold H. Leventhal opined that "the Commission in putting into operation a new regulatory scheme [is] entitled to an extra dollop of judicial deference." Deference as well as illogic was applied by the court which said of the ICC's rate/variable cost ratio, "We in no way intimate that we think the Commission erred in its approach or result. We only say that we do not sufficiently comprehend its reasoning."

Market dominance was hardly the sole case of foot-dragging by regulators. Similarly, the ICC opened consideration of seasonal and other special rate proposals by announcing its intention to require rigid sets of cost and revenue data from the railroads—relenting only after more intense protest from DOT and the Justice Department. When it came to the reform provisions for ancillary rail services, the Commission proposed to require railroads to decrease line haul rates in every situation where an ancillary service was separated from the existing point-to-point tariff and priced individually. Protests were rejected when the ICC promulgated the final rules in summer 1977, and DOT's petitions for reconsideration were put off. Result to date: no rate proposals offered by the railroads under this "rate flexibility" provision.

So where does this leave regulatory reform? Despite opposition, the 4R Act accomplished some lasting steps in the drive to whittle down ICC control of the railroad industry: the largely-intact freedom to lower rates down to variable cost, the shifting of the burden of proof away from suspension, the numerous minor restrictions upon the potential for ICC delay in rate cases. For its part, the Commission has moved to defuse criticisms of its administrative slowness. And ICC consideration is currently being given to exempting rail rates for agricultural commodities from minimum rate regulation, to permit railroads to compete with truckers who carry these commodities exempt from regulation. Still, surveying the no-suspend zone fiasco and the market dominance mess, Washington tongues are clucking that deregulation has been tried and failed. The railroads almost unanimously disagree. Says Conrail: "The 4R Act did not provide the fundamental regulatory reform necessary to strengthen the rail industry." Or, in the words of Southern Pacific president D. K. McNear: "A new policy should be written in such a way that the bureaucracy cannot subvert it."

RAIL MAP DUE FOR CHANGES?

Congress expressed its unhappiness with ICC policy toward rail mergers by mandating new procedures in the 4R Act. The reasons for dissatisfaction were compellingly evident. The collapse of the Penn Central symbolized the failure of railroad managements to reap savings promised by "regional" mergers of parallel railroads like the old New York Central and Pennsylvania. The PC collapse also illustrated the futility of the ICC's trying to shore up weak railroads by requiring "strong" merger partners to take them in; forced inclusion of the fiscally woebegone New Haven railroad was a prime cause of the Penn Central bankruptcy. Finally, the failure of the Rock Island railroad in 1975 after a 12-year ICC delay in approving a Union Pacific-Rock Island merger proposal demonstrated the need for greater freedom in railroad restructuring.

The 4R Act set time limits for Commission action upon merger petitions and created an experimental "expedited merger procedure" for rail restructuring proposals brought jointly by carriers and the DOT. Amid railroad complaints about uncertainty and loopholes, the new procedure has so far languished in disuse. But this may change. Burlington Northern, a Chicago-Pacific Northwest originator of lumber, grain, and coal traffic, has petitioned to merge with the Frisco line, which would give BN commodities single-line access to the South and Gulf ports. The Norfolk & Western and Chessie System have jointly applied to extend their Appalachian-based operations over the Detroit, Toledo & Ironton railroad; Michigan-based Grand Trunk Western has filed a competing bid for DT&I to get some of those Cincinnati-Great Lakes coal loadings for itself.

Talks have also begun, and then stalled, between two sets of southern and western lines. Southern Railway, which operates as far east as Washington, DC, held discussions with the Missouri Pacific Lines, which reach as far west as Pueblo, Colorado. More recently, California-based Southern Pacific Lines bought a 4.8 percent interest in, and opened merger talks with, Seaboard Coast Line Industries, which operates trains as far north as Chicago and as far east as Richmond, Virginia. These merger talks stalled, but Southern Pacific turned around and announced an agreement to purchase Rock Island's Tucumcari, New Mexico-St. Louis trackage.

But these are romances between prosperous eligibles,

It has become an urgent necessity for railroads to make some bold departures from traditional practice if they are to survive.

end-to-end mergers designed to remove obstacles to single-line rail service between important markets. Still unresolved is the fate of weaker roads located principally in the Midwest. Some, like Sunbelt-based Kansas City Southern, are hanging tough and talking of expansion. Insolvent Rock Island refuses to die (with the government holding its major creditor angrily at bay) and recently proposed a novel plan for track-sharing by Midwestern grain-haulers. Others, like the Chicago & Northwestern, the Illinois Central Gulf, and the Missouri-Kansas-Texas, keep improving facilities in anticipation of potential suitors. The troubled Milwaukee Road, which filed for bankruptcy December 19, 1977, appears to be a candidate for partial abandonment despite the road's persistent pleas for inclusion into unwilling Burlington Northern. Given the extensive overbuilding of railroad track in the Midwest—Iowa, Kansas, and Minnesota nearly match such states as Ohio and Pennsylvania for rail mileage—even the relatively prosperous lines may see abandonments before railroad restructuring is over.

What role will the federal government take in all this? "We do not want, nor do I believe we need, a 'Conrail West,'" said Transportation Secretary Brock Adams at a hearing convened last January to consider federal assistance to the bankrupt Milwaukee and Rock Island lines. Instead, the Federal Railroad Administration will knock heads together in an attempt to force track-sharing agreements which could permit scrapping redundant facilities. In its arsenal FRA packs not only the power to speed merger proposals before the ICC but also $1.6 billion provided in the 4R Act for railroad rehabilitation assistance. Several Midwestern railroads have already sold redeem-

able preference shares to Washington in exchange for assistance, but most of the fund remains, and FRA has promised to use it as "leverage" in accomplishing the agency's restructuring objectives.

Two kinds of prognosis are possible for the nation's railroads. One views the additional Conrail funding, ICC intransigence on regulatory reform, and the deepening federal financial stake in Midwestern railroading as indicators of backdoor nationalization. Other evidence could be cited: the newly fashionable references to how "well" Canada has muddled along with one nationalized railroad and one private railroad (with allusions to Conrail and Chessie), a DOT study due in the autumn which will comprehensively recommend future federal assistance in railroad financing and restructuring; H.R. 8485, introduced by Congressman Florio to investigate the feasibility of rail nationalization; and recent calls for federal takeover made by state officials concerned about railroad safety. There is the precedent set by Amtrak, the government-sponsored "for-profit" passenger train corporation which appears about to be formally nationalized in view of its $500-million-a-year-and-rising deficits. A recently aired DOT recommendation for a slimmed-down Amtrak system now must undergo nationwide hearings culminating in definitive restructuring recommendations by the end of the year. Legislation has already been introduced to put Amtrak on the dole permanently. How it got there, and why it stays, is perhaps best symbolized by the recent resignation of Amtrak president Paul Reistrup, who cited his "frustration" with continual Congressional interference in Amtrak's operation.

The failure of regulatory reform to accomplish substantial deregulation of the railroad industry has seriously retarded the railroads' chances for prosperity. It has become an urgent necessity—no longer just a talking point—for railroads to make some bold departures from traditional practice if they are to survive commercially. Any one railroad could probably hire enough lawyers and apply the pressure in the right places to get away with these changes now, but for the synergism to work many railroads have to change. And this change will occur only after deregulation—there are not enough "heroes" in the industry for it to be otherwise. While deregulation would help, however, it is not sufficient. What is driving even the relatively prosperous railroads to the wall is the ever-narrowing gap between truck and rail costs. Continual improvements to the highway system and liberalized maximum truck weights have caused a dramatic drop in linehaul truck costs to the point where rail is now seldom cost-competitive at distances of less than 500 miles. This tax-money subsidy to the truckers' right-of-way cost helps to explain the appeal among rail managements for federal right-of-way rail assistance and even ownership. It is an issue whose time is yet to come.

All these forces are converging in time for preparation of the FY 1980 budget, making some form of increased federal involvement—perhaps comprehensive assistance programs and outright nationalization of Amtrak—an unfortunately likely prospect.

Other forces pull in the opposite direction, however. Conrail's efforts to segment its markets into manageable units and the growth of shipper-managed trains possess considerable turnaround potential, perhaps enough to permit the railroad to buy its way out of its uncomfortable association with the federal government. Further regulatory reform initiatives from DOT and the rail industry seem almost certain, though no timetable has been set. With growing railroad merger activity, a Midwest restructuring might emerge without substantial federal aid. Overall, lessening economic demand for rail service reflects itself in a growing political impatience with paying railroad deficits—which is one reason rail unions are increasingly leery of complete railroad nationalization.

The Railroad Revitalization and Regulatory Reform Act of 1976 has not been a success. Advertised as a "new" departure from traditional transportation policy, it actually fell entirely within that tradition of *ad hoc*, superficial legislation aimed at "solving" deep-rooted problems with large doses of taxpayers' money and cosmetic reform. For railroad policy, it will be "back to the drawing board" in the next few months. Will a federal takeover, or revitalized private sector railroads, be in the offing? The answer lies around the bend. ◻

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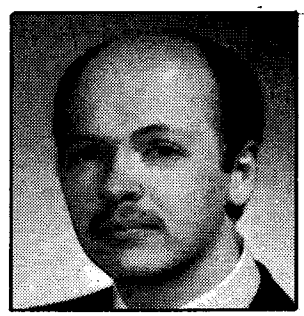

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Regulations that are merely an inconvenience to a large corporation may be a matter of life or death to a small firm.

How the Feds SCREW Small Business

by Kenneth W. Chilton

Say "the land of opportunity," and you call forth the rich image of the independent business—run by those who want to go it alone, do it their own way; who have their own ideas about what other people want or need. The endemic failure of such enterprises is legendary, but the appeal remains: there is nothing that can stop such go-getters except their own mistakes. Increasingly, however, there are plenty of roadblocks on that traditional path to success, and it's showing up in the vital statistics. Small business is ailing, even if the dream is alive and well.

A VITAL LINK

There is ample reason for concern over the health of American small business. Although these enterprises are rightly called small, their cumulative contribution to the economy is far from paltry. There are over 13 million small businesses (excluding family farms), comprising more than 95 percent of all private enterprises in the United States. They employ over 40 million persons and produce 43 percent of the gross national product. While small retail outlets (the so-called mom-and-pop stores) represent a large segment of these businesses, small enterprises are a vital element of nearly every segment of the American economy.

Another reason for concern about small business is the vital role that the individual entrepreneur plays in the area of innovation and in competition. Not too many people are aware of this, but air conditioning, Bakelite, automatic transmissions, stereophonic sound systems, air brakes, plain-paper copiers, and instant photography were all breakthroughs initially made by small entrepreneurs. Economic effectiveness is well served when barriers to entry into markets are at a minimum. The cornerstone of private enterprise or capitalism rests on efficient markets and vigorous competition.

Yet another reason for consideration of the future of small business is simply that the future does not look bright for many of these firms. For example, a relative shift in technological innovation from small business to large firms appears to have occurred in the late 1960's. According to one research report published by the American Association for the Advancement of Science, small firms (those with fewer than 1,000 employees) produced the greatest number of major innovations from 1953 to 1966, but large manufacturing companies (those with 10,000 or more employees) led in innovation in the 1967-73 period. To be sure, many factors are at work here, including the effects of inflation, changing economies of scale, international competition, union wage rates, and all manner of government factors ranging from taxation and credit policy to regulation. Of this host of factors, perhaps none is more perverse than the latter.

The recent expansion of federal government regulation of business has been particularly severe on smaller companies. Large capital expenditure requirements to meet environmental or job safety standards above those that would be followed voluntarily may represent merely an uneconomic application of resources for a large firm; but for the small firm, it may literally be a matter of the enterprise's life or death. While surely there has been no deliberate intent on the part of the regulation writers to bring about the demise of small business firms, little if any consideration has been given to the economic impact of regulation on the small firm.

SMALL IS VULNERABLE

We need look at only a few examples of the effect of government regulation on the small firm in order to see that it disproportionately hampers small business.

Case: The foundry industry includes approximately 4,200 foundries; 82 percent of these firms employ fewer than 100 people and 75 percent employ fewer than 50. The total industry employs approximately 375,000 workers. In the late sixties this industry began to lose small plants—those that specialized in small orders of less than 500 pieces a year—due to a combination of economic recession and EPA

Table 1

Causes of Foundry Closings, 1968-75

	EPA Part or Total	Labor or Skills	Bankrupt or Economics	Consolidations	Death of Principal	Unknown	Total
1968-69	1	1	7	1	4	22	36
1970	6	3	8	4	2	52	75
1971	14	1	22	5	1	74	117
1972	14	9	13	3	2	28	69
1973	7	1	5	2	—	4	19
1974	11	1	5	2	—	9	28
1975	1	—	1	1	—	3	6
Total	**54**	**16**	**61**	**19**	**9**	**192**	**350**
% of Total Excluding Unknown	**34%**	**10%**	**39%**	**12%**	**6%**	**—**	**—**

SOURCE: *Modern Castings Market Insight*, 1975

regulation. The castings produced by these foundries are critical for production of limited-quantity capital equipment. For many of the foundries that closed, the size of the EPA-mandated emission control expenditures exceeded the net worth of the entire operation. From 1968 through 1975 there were 350 verified foundry closings. Table 1 summarizes the results of a follow-up study conducted to determine the causes of these foundry closings.

Case: The impact of proposed standards for air-lead exposure levels promulgated by the Occupational Safety and Health Administration has been examined in a recent study by Charles River Associates. The consulting firm estimates that the total compliance cost would be approximately $416 million (in 1976 dollars) with annual costs of $112 million. The predicted result in the battery industry, which is made up of 143 firms, is as follows:

> OSHA lead regulations would result in much larger per unit production costs for smaller plants than for larger plants. Because of large differential costs and the fact that battery prices would only rise to cover the unit costs of the larger firms... smaller plant operators would be forced to absorb the differential in costs. In many cases the amount absorbed would... eliminate entirely the plant's profitability and about 113 single plant battery firms would be forced to close... [this] would eliminate half of the productive capacity not operated by the five major battery companies.

There is not enough information in this report to assess the merits of alternative OSHA standards for measuring the hazard posed by working in these firms. It is quite clear, however, that the predicted impact of the proposed standard indicates the need for further study prior to its final issuance.

Case: Albeit unintentionally, at times regulatory agencies can hurl devastating blows at a small business by simply releasing incorrect information. So it was with Marlin Toy Products. Marlin sales totaled $1.5 million in 1972; the company employed about 85 people in a community of 1,100 people. In November 1972 the Food and Drug Administration notified Marlin that its two main products, the toy balls known as Flutter Ball and Birdie Ball, were going to be banned because the balls contained small noise-making pellets that could be swallowed by a child if the balls cracked. Later Marlin and the FDA agreed that if Marlin would recall the balls on the market and remove the pellets from future balls, they would be removed from future banned lists. Marlin gave rebates totaling $96,000.

In October 1973 the Consumer Product Safety Commission (which had assumed the authority for toy safety) picked up the old ban list from the FDA and reprinted it—inadvertently omitting the fact that Birdie Balls and Flutter Balls were banned only if they were the old version that contained pellets. The company's toy sales plummeted during the vital Christmas season. Marlin had to lay off 75 percent of its work force and was forced out of the toy business. The CPSC admitted that "the toys were supposed to be deleted from the banned list but weren't and we weren't about to recall 250,000 lists just to take one or two toys off." (Of course, if one or two *toys* out of 250,000 are found to have hazardous defects....)

MONEY PROBLEMS

A key to the continued existence of any private enterprise is, of course, its ability to generate a stream of profits sufficient to finance future capital expenditures for replacement and growth. Small firm or large, it doesn't matter—this fundamental economic requirement must be satisfied. There is, though, a basic difference between large firms and small firms faced with "unproductive" capital expenditures required to meet governmental regulatory standards: the large firm is more able to pass along to the consumer the added cost and a reasonable return on that investment.

In 1974 the National Association of Manufacturers surveyed its members and obtained estimates of the costs of meeting existing OSHA standards. The average estimate for firms with fewer than 100 employees was $35,000—a significant demand on the resources of a small firm. It is interesting to note that the only reference to small business in the whole legislative history of the Occupational Safety and Health Act is for the provision for Small Business Administration financial aid to improve workplace safety.

Other regulatory agencies have also created increased capital demands on small business. The Employee Retirement Income Security Act was designed to *protect* employee pensions. The result? Commissioner of Internal Revenue Jerome Kurtz estimates that, due to a propensity to specify uniform standards for all pension plans, large or small, as much as 30 percent of the nation's private pension plans may have gone out of business. An important contributor to this phenomenon is the estimated 5-10 percent increase in the costs to small business to meet pension law requirements, higher minimum funding, accounting and actuarial services, and insurance for fiduciary liability.

Some government regulations adversely affect the ability of small enterprises to attract investment. The "prudent man" rules included in ERISA, coupled with the focus on personal liability for the "imprudent" pension fund manager, have accentuated the trend to concentrate equity investments in the larger, well-established companies. Changes in these rules to allow up to two percent of a pension fund's portfolio in smaller, more risky firms—while meant to provide some relief for small business—may, unfortunately, merely place a ceiling on these types of in-

Table 2

New Stock Issues by Small Business

	No. of Offerings	Total Amount (millions)
1969	548	$1,457.7
1970	209	383.7
1971	224	551.5
1972	418	918.2
1973	69	137.5
1974	8	13.1
1975	4	16.2

Source: U.S. Small Business Administration

Table 3

Comparison of Costs of Flotation as Percent of Proceeds

1951, 1953, 1955

Size of Issue	Publicly Offered	Privately Placed	Difference
$ 500,000- 900,000	10.24%	2.14%	8.10%
1,000,000- 1,900,000	8.00	1.52	6.48
2,000,000- 4,900,000	3.33	1.12	2.21
5,000,000- 9,900,000	1.53	.83	.70
10,000,000-19,900,000	1.44	.63	.81
over 20,000,000	1.22	.44	.78

Source: American Enterprise Institute

vestments by the pension funds.

Some of the Securities and Exchange Commission's rules also tend to hem in the small firms. The SEC definition of a "private offering" is the solicitation of no more than 25 potential investors and sale of stock to no more than 10 investors. SEC registration for "public offerings" costs between $100,000 and $150,000 to prepare and takes four to six months. Table 2, from the report of the SBA Task Force on Venture and Equity Capital for Small Business, demonstrates the decline in the new-issue market for small business (those with net worth of less than $5 million).

Table 3 compares the estimated cost (in 1969 dollars) of flotation of public and private debt issues for various sizes issue. The difference in the two types indicates, in part, the added cost of meeting requirements imposed by the SEC and ancillary accounting and legal costs associated with public offerings. It is clear that small firms (small issues) bear disproportionate costs whether private or public and that SEC requirements greatly compound the costs for small issues.

The future does not look very bright for many small businesses.

THE PAPERWORK BURDEN

It is much more difficult to assess the impact of regulations that are merely burdensome to small business—such as meeting paperwork requirements. The Commission on Federal Paperwork reports that five million small businesses spend $15-20 billion, or an average of over $3,000 each, on federal paperwork and that small businesses are relatively harder hit by federal information requirements than larger firms and often lack the necessary expertise to comply.

The latest addition to the power of the Environmental Protection Agency comes from the 1976 Toxic Substances Control Act (Tosca). Typically, the impact on small firms in the chemical industry is given little consideration as regulations are being drafted. The act gives the EPA virtually unlimited authority to require extensive testing—at the firm's own expense—of any new chemical product before it goes on the market. In addition, EPA can take action against as many as 50 existing substances annually and can require almost unlimited data.

Although Congress intended to shield small businesses from many of Tosca's paperwork burdens, the latest proposed regulations define "small manufacturer or processor" as a single-plant manufacturer with annual sales of less than $100,000 or with production of less than 2,000 pounds annually. Under that ruling, a firm such as the Harwicke Chemical Company in Elgin, South Carolina, is classified as big business. Harwicke has less than 75 employees and produces $9-11 million in annual sales out of a single-plant factory. Harwicke's sales manager has become the regulatory expert since he is the only employee besides the president who even holds an advanced degree in chemistry.

Not all examples of the heavier burden of regulation on small business have to do with the newer regulatory agencies. A National Labor Relations Board election is a good example. Table 4 relates the total estimated cost per employee of an NLRB election to the size of the company work force. Clearly, the unit cost of meeting this regulatory requirement is smaller for the large firm ($101.60 for companies with over 1,000 employees) and larger for the small firm ($134.60 for firms with fewer than 100 workers).

REMEDIES

One of the problems is that small firms have little if any opportunity to influence regulation in the formative stages. Even if individual firms become aware of proposed laws or regulations, by virtue of their smallness they can ill afford to devote precious management time to attempting to alter an only potentially difficult situation. That this problem often has gone unrecognized in the past was aptly expressed by James D. Hutchinson, who headed the Labor Department's pension benefits unit when ERISA was passed. "No one asked" for input from small business during hearings on the legislation, he said.

Small firms have little if any opportunity to influence regulation in the formative stages.

There are hopeful signs that the regulatory agencies are waking up to the special problems of small business. For instance, seven years after its establishment, OSHA has begun a combined effort with the Small Business Administration—the Small Business Assistance Program (SBAP). This is a pilot program in one of OSHA's regions, with five federal safety and health officers acting as "contact points" between OSHA and small business. These officers will provide a referral service, directing the businessmen to the appropriate agencies and organizations.

In addition, OSHA has proposed to pay 90 percent of a state's cost to send consul-

Table 4

NLRB Election Costs per Employee

Cost Category	Number of Employees Eligible to Vote 50-99	100-149	150-299	300-599	600-1,000	1,000+
Legal	$26.00	$19.00	$15.50	$12.00	$ 8.00	$ 8.00
Employee Time	27.00	27.00	27.00	27.00	27.00	27.00
Loss in Productivity	57.60	57.60	57.60	57.60	57.60	57.60
Executive Time	24.00	20.00	18.00	12.00	9.60	9.00
Total Cost per Employee	**$134.60**	**$123.60**	**$118.10**	**$108.60**	**$102.20**	**$101.60**

Source: *Michigan State University Business Topics*, Summer 1975

tants to visit a workplace and identify unsafe conditions. Sixteen states do not currently provide such service. The consultants cannot issue complaints if an employer is violating safety and health laws, but the consultant must request "immediate elimination" of any hazard posing "imminent danger." If a violation is considered serious, the consultant will give the employer "a reasonable time" to correct the problem, and if the correction is not made the consultant notifies OSHA. The consultant does not levy fines, and thus the small firm can request his assistance without fear of punitive results.

At the very least, the backbone of private enterprise—the small business firm—should be considered at the *outset* of the regulatory process.

Minor changes have also been instituted in ERISA regulations, such as reduced reporting requirements and a small business participation in its Advisory Council. The Internal Revenue Service and the Labor Department are working together to eliminate duplication of forms associated with ERISA.

These changes have been prompted by public criticism of initial regulatory action. In the scramble to enlist government agencies in the protection of consumers, workers, pensioners, and investors, small business has been sorely neglected. It constitutes a vital segment of the economy, however, and there is a beginning awareness of the need, now, to "counter-protect" small business, to mitigate the harder-hitting consequences of regulation. Perhaps this sequence—protection of some group of citizens by the imposition of regulatory apparatus, then protection of the regulated from the negative side effects—is part and parcel of the whole affair. Even if so, it does not appear that the counterproductiveness of the process is going to be recognized soon. At least, then, the backbone of private enterprise—the small business firm—should be considered at the outset of the regulatory process. If not, that backbone is going to give way under the burden it is being forced to bear, thereby debilitating the entire economy. ◻

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Wright

(*Continued from p. 27*)

"justify") the most fantastic violations of rights and government policies of economic intervention. There is no objective way to draw the line between "critical" public importance and "subcritical" public importance and "minor" public importance. There is no way to implement even the smallest such "regulation in the national interest" without violating individual rights. And Phillips presents no reasons *why* such regulation is morally justified—only the stock assurance of any conservative that that's the way it's always been done "throughout US history."

In spite of the serious nature of Phillips' proposals, however, one can humorously appreciate the forthcoming reaction of Phillips' liberal opponents to his appeal to their own principles. His argument is the one they cherished for decades, and his examples are among their prized accomplishments. However wrong, Phillips is at least *consistently* wrong, and he has caught the liberal camp in an embarrassing contradiction.

The liberals and conservatives have always represented a false alternative on these issues: the conservatives favoring economic freedom while fighting for every control they could get over ideas and personal moral codes; the liberals fighting for a free press and moral choices while tying up the economy. In neither camp was there a consistent advocate of freedom in both respects—an across-the-board, *principled* advocate of individual rights. As Phillips has shown, however, there are those who have succeeded in finding the consistently *wrong* position.

REVERSING THE TREND

When a country is headed toward statism, there are at least two requirements for a *peaceful* reversal of its path: freedom of the press and speech, and the legal power to change the government. The first is necessary to spread the right ideas, and the second to implement them politically. This fact makes the freedom of the press today a more urgent issue than ever.

Fortunately, the prospects are not altogether bleak. The SEC proposals have lined up many businessmen—if not conservative political thinkers—on the side of a free press. And the growing pressure on the press has at least alerted many liberals like Edwin Diamond to the threat of potential censorship. If Phillips and his allies receive enough of an indignant rejection, the time might actually be ripe to reduce the FCC by congressional action to a "watchdog" role of policing interference in the airwaves. Indeed, Senator William Proxmire, among others, is backing legislation to abolish the fairness doctrine. (Unfortunately, it is not yet clear what this would mean in terms of FCC licensing practices, which are just as dangerous.)

Freedom of speech and of the press is an issue of major importance to those who, unlike liberals and conservatives, consistently opt for liberty. With writers like Phillips using the liberals' own arguments, liberal defenders of the First Amendment may be unable to give the issue the support it needs. If so, those who *can* give it such support will have to make themselves heard. ◻

Mr. Wright is finishing doctoral research in physics at Boston University. Since 1973 he has been a principal contributor to and since 1976 has been editor of Ergo, *an independent student weekly founded at MIT in 1969. This article was originally published in* Ergo *and was adapted for REASON by the author.*

Coming Next Month:

Energy expert Dr. Petr Beckmann returns to REASON's pages in October with a thoroughgoing critique of the leading advocates of the "small is beautiful" school: E. F. Schumacher and Amory Lovins. Journalist Michael Silver reviews the growing crop of restrictions on medical freedom and offers his prognosis for the future. Liberal guilt and its consequences is the subject of a thoughtful discussion by Allan Goldstein. Economist E. C. Pasour gives a new perspective to the debate on deregulation by questioning whether it is even possible for regulatory agencies to regulate. And Robert McBurney reviews the chilling implications of recent "bank secrecy" laws. Plus Mark Tier on Money, Jim Davidson's Viewpoint, and reviews of new books on UFO's, regulation, and police states.

Every Kid an Entrepreneur

The only way today's youths are going to learn about the free market is to participate.

by Thomas S. Booz

Entrepreneurship is a lonely affair these days. People owning their own businesses make up only 5 percent of the population, and 60 percent of that small fraction consists of farmers. Our civilization depends on its entrepreneurs, but it is very tough to get a nation, led by politicians to whom so small and rich a target is a challenge, to understand that.

We know that being in business is tried by millions, and seven out of eight fail in the first year—some surviving, but by what means we do not know. The problem of teaching how to be enterprising seems insuperable. It is not even imparted in the Harvard Business Schools of the world, where they teach, instead, "management"—how to fit into someone else's business (or government) that is already built and operative. Apparently business building is one of the activities that can be learned only by doing, with auxiliary help from books and organized sources.

If entrepreneurs are important to the scheme of things, however, it would seem wise to start learning "how to do it" at a tender age. Youngsters, in fact, are inventive, energetic, and quick to learn—ideal entrepreneurs. This potential could be capitalized upon by those who understand the value of enterprise. We could in our own towns, clubs, etc., initiate what I propose to call a *Youth Enterprise Association!*© The idea is to encourage youngsters to find products and services that can be sold if they go into business for themselves. The newspaper route is the classic example, although it is not often looked at in this light.

YEA! IS UNIQUE

But we already have Junior Achievement, you may say. JA will have to be supplanted by *YEA!*, for it has several bad faults.

JA starts after school does and ends before the school year. Business, on the other hand, once begun, is a continuing thing. Anyone learning about business needs to be dedicated to being effective for days into years, unless he fails or sells out.

JA sets up corporations, yet no individual business starts that way. When JA splits up corporate functions, some of which are foreign to the needs of an individual business, it trains individuals to be specialists, denying them the whole training that is essential to self-employment. It shows them how to be good employees, but that is not our aim. Later our self-employed youngsters will want to hire good employees, but first they have to get a business going.

JA begs from business to keep offices and managers paid. This is not a good business operation but a private charity. It makes businessmen feel good to help the children with their projects, but this won't do if the youngsters are to learn the enterprising arts. Profit must be emphasized because profit gives life and permanence to good ideas. And part of being in business for profit is paying those who provide services. So any overall office function, for example, that is supplied by businesses in the community should be paid for.

Finally, the JA program is thoroughly tied in with the public schools, which are part of government and staffed by teachers who can increase their take of the tax dollar by demanding that we have more and more government and less and less private initiative. It is time to take the education of our future entrepreneurs out of the reach of government in any form.

GETTING ROLLING

Here, then, are some preliminary ideas about how to get it started. You are already convinced of the value of *YEA!* and you get some others to go along. You and your committee identify products and services that young people could handle as independent contractors, self-employed. If any company wants to use this development to enhance its own marketing, that is a valid approach. The need will be to find, one by one, youngsters who will take the risks and expend the energies needed to build a business in one field or another, with advice, but with their own capital (perhaps borrowed) and their own methods and personal application. It isn't an easy assignment, but some things will work out.

Perhaps the first step would be an investment club, to which young and old will be invited. They'll invest fixed amounts each week, but unlike the stock-investing club, each investor will control his own choices, taking a piece of whatever opportunity seems to him to be worthwhile. Those who want to borrow or find partners in their enterprises (and partners don't have to be limited to your young people) make their presentations and get support or not as investors see fit.

It may be that some young enterprisers can get family financing or loan guarantees, which can cut their interest expenses, but since risks are high, payment for capital will tend to be high. Having to make an effective presentation of one's plans induces the newcomer to plan well and make superior presentations of plans.

Of course, many will go into business on the capital of their time, having to invest or borrow little at first, until growth requires it and they have a successful operation to speak for them to bankers.

Probably the most splendid thing about *YEA!* is that those who are self-employed, no matter how young they are, are exempt from child labor laws and minimum wage laws, for themselves. They can't duck Social Security and income taxes if they are successful, but that will teach them how to handle those problems in future years.

And *YEA!* will allow failure for those who don't make it. Junior Achievement doesn't, yet failure is by far one of the most effective tutors in business. We need to let these beginners know that we're going to try to get them started where

their chances of success are perhaps better than in real life—that this is real life with a boost. If the young entrepreneur fails once, he or she will learn tremendously. Failure is affordable in youth, when one is not dependent on one's own earnings. And if some of them learn that being their own bosses won't work for them, they'll be mighty fine employees for some other business later on.

With any kind of support from local businesses, you may even make some effort to have restrictive city laws reduced for all businesses, not just because the owner is under 17. Youngsters don't want special treatment, and their enthusiasms can be a strong factor in developing alternatives to heavy control of business by city authorities. When a youngster presents such an idea to a city council, he garners a lot of attention from the media that an older person wouldn't.

THE COMPETITION

You'll get some static from established businesses, who don't like the idea of any competition. Play fair with them. A youngster whose business overhead is paid by his family's house shouldn't undercut prices because he can. There are three elements on which one can compete—price, service, and quality of goods. You can't be best in more than two. So where fixed companies have to charge enough to pay overheads, but rarely deliver, a competitive youngster can sell at market prices, thus to maximize his own returns, but give personal delivery, since he isn't paying someone else to deliver for him. Concentrate on service and quality and don't wreck a local company on a price basis. Our aim is to build and support the business community, to some extent at least, and if a new business competes on price, it will have to go under as soon as it gets big enough to incur the overhead of a bigger firm. Let your teams know these things and direct their energies to filling needs that are not more commonly met by established companies, in order to get the latter's help and avoid frictions that lead to restrictive laws on everyone.

There are limitations in selling, such as from house to house, so plan accordingly. Those laws are made by local businesses who don't like outside competition and citizens who don't like to be pestered to buy by phone or at their doors. A successful personal sales program develops from personal contacts rather than broadcast advertising and promotion. It is highly annoying, for example, to drive off from a parking lot and find a piece of advertising paper stuck under the windshield wiper. Think these things out. Don't clomp down too much on enthusiasm, but see to it that they understand the effects of any actions they take.

Some of you should be able to develop franchises that let a lot of young businesses spring up. Most such businesses can be run without help from a franchiser, once the idea spreads. If you can supply specialty items at a good price, there should be some growing markets once young people take hold of enterprising.

The local chapter of *YEA!* should be run by the business owners themselves, accepting counsel from the rest of us. They learn to conduct meetings, to maintain discipline, set up standards of performance that can keep hostility from the rest of the community down. The young are often suspected of the worst, and it is up to them to maintain their standards so they are respected in the community, as young people rarely are under other circumstances.

There is need for classes in operating different kinds of businesses, as well as in specific areas that are common to each business. Since we learn the most by teaching, work out courses that they can teach to each other. The youngster who reports on income tax reporting, for example, will become an expert in that activity. He'll have to study ahead of time so he'll put on a good show, and he'll have to answer questions he may not have faced before, going and getting and coming back with answers. He can solicit counsel from a CPA, but he should handle the affair himself, as much as possible. Our whole principle is one of learning by doing.

Finding meeting space if an Association grows large can be a problem, but don't hesitate to turn to a church to which a member belongs. This is their kind of thing, and it's better to stay out of schoolhouses and city halls if possible, since we are concerned with freedom, not space. Again, each business youth will learn from his peers as he cannot from a book, and meeting regularly, in specialized groups or together, will let them mature in a fashion that a teacher-centered system cannot match.

As noted, many can expect to fail, and that should be part of the program. They should continue to be welcome, since many of them will try again once they are bitten by the bug of being their own bosses. They will be in a group in which others succeed and thus can see what they'd like to handle next. They could be prospects for buying a successful venture when the owner decides it's time to go off to college, for instance. One aim should be that no successful business ever just fades away. It is too valuable, both as a source of income and as a teaching tool.

If a business prospers and grows—and a few will—the owner will need to hire others, and since presumably those who have tried and failed know more about his problems and are more realistic about their expectations, growth by hiring other members should be an effective way to hold the interest of those who didn't make it themselves.

Perhaps more than that, established (adult) business should find this group a profitable source of motivated, industrious employees. This aspect probably shouldn't be publicized, because it would tend to attract members looking for jobs rather than for success in their own firms.

Some may eventually want to incorporate. You'll have a local lawyer on your advisory team, but the firm should pay the regular costs, and the case can be used to teach other Association members who haven't reached that point.

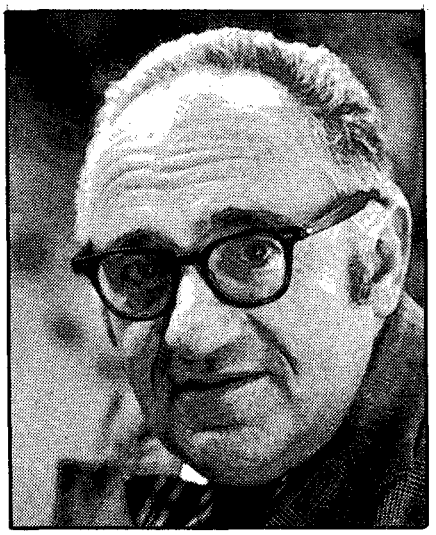
When you get into operation, remember to reach out, for example, to minority groups. It is easy to work with your own kids and those of friends, but if you can show some less-advantaged children how to enterprise effectively, it will swing whole families over into the hopes of liberty.

By this time, your own ideas have started rolling around, and you are probably way ahead of me in many respects. Brainstorm with me. Write to me at 6755 W. Broward, #201, Plantation, FL 33317, with your ideas and to get permission to use the copyrighted name *YEA!* There are other groups with the initials YEA, but ours differs in the exclamation mark, a part of the logo. We'll want to start a master file of specific cases. We'll want to collect case histories of failures as well as successes and statistics on the kinds of businesses that fail and succeed, or the proportion thereof. If you can get clippings on youngsters who have gotten into business successfully or you know of product lines that others should know about, send me the facts. As references are built up, we'll get a reporting network started. Advise, also, of magazines and books that should be included in a *YEA!* branch's library. If you write to me at the above address, we'll know who is trying, and we can get together in a more formal grouping. Eventually, perhaps, there will be a national organization, but that isn't as important as what the individual does.

The point of it all is that if you and I don't raise a generation dedicated to free enterprise, they'll be dedicated to its destruction. ◧

Mr. Booz has been bitten by the entrepreneurial bug and has thus far failed in business twice.

viewpoint



Murray N. Rothbard

These are exhilarating times. At long last, the mass of the public has expressed its total disgust with crippling taxation—so much so that the entire nation and all the media are buzzing about the nationwide tax revolt. The sparkplug of this revolt was, of course, the June 6 primary in California, when a veritable outpouring of voters swept Proposition 13 to victory.

At first it seemed that Prop. 13 didn't have a chance. How could it? Arrayed against it was the entire Establishment in the state—led, as usual in these matters, by the government bureaucracy and public emloyee unions, conspicuously the teachers. They used the old tactic that had proved so successful in the past, in California and in other states: an hysterical scare campaign. Day after day, using all the media (virtually every newspaper in the state, headed by the powerful *Los Angeles Times*, bitterly opposed Prop. 13), the message was pounded home: government would disappear the day after June 6 if Prop. 13 passed. The schools would all close, the library books would disappear in a puff of smoke, police and fire departments would have to be abolished. Organized teachers and bureaucrats would surely vote *en masse* against Jarvis-Gann, and any favorable opinion would be neutralized by the scare tactics and the prestige of its opponents. Big business, by the way, generally strongly opposed Prop. 13, led by the municipal bond brokers, who worried about their own and their clients' investments, and by the Bank of America, itself hip-deep in municipal bonds.

Against this powerful array, what could the Jarvis-Gann forces muster? Their leader, Howard Jarvis, a crusty veteran opponent of taxes, was ridiculed systematically by the media as a nut and a crank. The Jarvis forces had little organization and less money. The Libertarian Party and its impressive gubernatorial candidate, Ed Clark, strongly backed Prop. 13, and a few economists, led by Milton Friedman, did so too, but this was surely a drop in the bucket. And many of the supporters seemed (and *still* seem) apologetic, joining the opponents in whining about the "meat axe" approach of Prop. 13 and of its "irresponsibility." With that kind of a lineup, how could Prop. 13 fail to lose, and lose big?

And yet, as the smear campaign against Prop. 13 reached a crescendo in the three weeks before the primary, a strange and wondrous thing happened. The more the statist Establishment whined and shouted about a loss of vital government services, about recession and unemployment, the more the public swung and swung heavily in favor of Jarvis-Gann. For once, and at long last, the old propaganda not only failed to work: it proved counterproductive.

There are two possible reasons for this. Perhaps the public simply didn't believe the politicians any more. Government had simply lost its credibility. As one radio spot for Prop. 13 pointed out: "You don't believe the politicians' promises; why believe their *threats?*" But there's another interpretation: the public has stopped salaaming before government's "services" and *wants* them cut, even by the legendary meat axe. The people want to lay an axe to the root of government.

There were straws in the wind everywhere in those last weeks. Policemen, government employees, even teachers broke ranks and voted for Prop. 13—in particular those with seniority who had no real fear of losing their jobs. For after all, they all owned houses, and they were all hit by the rising property taxes—taxes which rose even as the voters were deciding what to do. In Marxist parlance, the "ruling class" (in this case, government officialdom) was split by the tax revolt. Even liberals, always pro-tax and pro-government spending, began to voice support for Prop. 13. A staff writer for the liberal *New West* denounced parasitic government officials and announced her firm support for Jarvis-Gann. And even Richard Reeves, prestigious liberal political analyst, wrote in *Esquire* in favor of Prop. 13 and against rising taxes, and ended by conceding: "Yes, Howard Jarvis is a nut. But in my heart I know he's right."

The final answer of the voters was a two to one victory, a victory which set politicians, bureaucrats and their hangers-on to trembling all across the nation. Politicians of both parties are leaping to join the bandwagon and to express their sincere and fervent desire to cut taxes. In New Jersey, Jeffrey Bell ousted the veteran Senator Clifford Case in the Republican primary, even though Case had been invincible for decades. The main Bell plank: a 30 percent cut in federal income taxes. The *New York Daily News* immediately took a poll of its readers on taxes, and received an overwhelming response of many thousands of readers calling for drastic cuts in property, sales, and income taxes.

There are other straws in the wind: notably, the fact that almost two-thirds of the US Senate have signed a bill to roll back capital gains taxes from their current 50 percent maximum to their 25 percent top of a few years ago. Also, the fact that the House passed a bill for income tax credits for private school and college tuition, directly going against a veto threat by the Carter administration, which lobbied hard for the traditional liberal plan of government grants and subsidies.

The tax revolt is here, and Howard Jarvis himself promises to go national to lead it. Libertarians and other opponents of crippling taxation must seize the great opportunity which has been presented to us. Above all, the leaders of anti-tax opinion must not trail behind the sentiment of the public. Their function is to lead, not to drag behind and obstruct this great movement. There must be no more talk in our ranks of "meat axe" and "responsibility." Let us indeed take a meat axe to Big Government.

It is particularly important that we insist on a real tax *cut* (such as Jarvis-Gann), and not fall for the pusillanimous conservative line of simply passing an amendment limiting the future *growth* of government taxation and spending. The public wants to *cut* government, not to sit back and limit its future rate of growth. It would be a terrible betrayal of this mighty

(Continued on p. 47)

taxes

Underground Economy

Spring's just bursting out all over these days...even in the midst of summer. That is, for us libertarians it is: the tax revolution is still growing, the battle between the producers and the takers rages on, and major anti-tax movements drive toward victory in at least a score of states.

Another bright spot is the growth of what some call the "subterranean" economy, better described as the "free market" economy. This is the gigantic—and growing—aggregate of productive, remunerative interactions going on all around us...none of which is reported to the government or IRS.

Back in March and April a little tempest raged over the untaxed sub-economy. It seems a Professor Peter Gutmann of the City College of New York ran a study on the amount of cash coursing through the American economy—which is so necessary to lubricate the *free market* economy—and found the demand for cash has been far outstripping econometric model predictions. Now why would that be?

Why? Because people are becoming ever more cynical and jaded about "our" government and its obscene tax burden. They are increasingly opting out, refusing to support it. This refusal to support the government monolith appears to us in two noble guises: the ever-strengthening tax revolt (above-the-board, as it were) and the growing, vigorous free market "subterranean" economy (a more personal, private road to tax reduction).

When Gutmann came out with his figures, there was a collectivist gasp: the admittedly indirect measuring devices he employed pointed to an untaxed American economy of about $195 *billion*. Or about 10 percent of the entire Gross National Product. The actual total could well be more.

The extent of this dynamic sub-economy was documented quite well earlier this year when the "Chicago Better Government Association" set out to prove the awful dimensions involved. By setting up a fake business, then seeking out professional tax advice, they found that nine out of eleven accountants advised them to "cheat." There are doubtless plenty more out there: the free market invites everyone to participate to mutual advantage.

The development of the subterranean economy is every bit as revolutionary as the above-board tax rebellion sweeping America. And it appears to be growing just as fast. Quoted in *Business Week* in March, Gutmann explained that he used "an indirect measure based on the sharp increase in the growth rate of currency. And it indicates that the subterranean economy is huge and growing rapidly."

The reason only indirect measures can be used is that those who enter the untaxed sub-economy are understandably circumspect in their public (and private) conversation. The IRS has a program where people are paid for informing on their fellows: the reward can be up to 10 percent of extra taxes collected. And in 1977 more than $360,000 was paid out to collect $14.9 million more in taxes. Paranoia is not called for—reasonable constraint is.

Who are those guys participating in the alternative economy? They appear to be a substantial and growing chunk of the American people: lawyers, small businessmen, moonlighting workers, flea marketeers, doctors, garage sale capitalists, farmers, barter lovers of all stripes... a social prism reflecting our society. In short, anyone who has access to non-traceable cash money in the course of his business.

For the free market partisans involved, being careful means first and foremost not having ugly records which can be grabbed by some arm of the government, most notably the IRS. These include bank and checking accounts, the totals of which over the year do not square with reported income. Instead, only cash is used, and it is kept in safety deposit boxes, private safes or vaults, or simply hidden in safe places (those without good imaginations in this area may pick up the book *How to Hide Almost Anything* by David Krotz, at their local library or bookstore).

Waitresses and other workers who receive large amounts of cash in untraceable tips are particularly active in this area—no one ever reports the entire amount of his tips. Those who report a set amount per month are often caught, as are those who continue to place the unreported cash in bank or checking accounts.

On the other hand, many band together within a single workplace and mutually agree to report only set *percentage* of the true amount of tips. The resultant fluctuation is an accurate—but shrunken—mirror of actual receipts.

Among those who own small businesses—groceries, restaurants and the like—a common ploy is to destroy end-of-the-day cash register tapes which reveal the amount of cash taken in. Only a portion of the true gross is then reported.

However, the absence of such records is a clue in itself. Other businessmen and women "ring out" cash registers several hours before the end of the day; the resulting register tape becomes the "official" record of money grossed. The rest of the take for the day is pocketed...and enters the sub-economy.

Such untaxed and unreported cash is not used to buy things which are obvious or readily traceable. Instead, it goes to pay for concerts or other entertainment, illegal substances such as recreational drugs and laetrile, gambling, gamboling, groceries, vacation spending, etc.

Other free market economy aficionados are jumping into arrangements such as barter and barter *clubs* with the fervor of born-again entrepreneurs. Dentists trade off healthy teeth for flying lessons; lawyers watch out for the affairs of local grocers in return for healthy rutabagas and other delicacies; farmers—notorious for having tremendous legal tax breaks and even then not bothering to report more than about 50 percent of their income—trade pigs, cows, crops, seeds, just about anything for what they need.

Then there are the flea marketeers and garage sale capitalists. How much of that cash money flowing so freely gets reported to local, state and federal authorities to be taxed? Little, if any. Even when payment is made by check, many go so far as to cash the check at the check-writer's bank, thus making it just about impossible for government agents to trace.

Why is this happening? Why the "huge and growing rapidly" phenomenon of the free market, untaxed, unreported, subterranean economy? Phillip Cagan of Columbia University, who did research into cash-demand in the early 1960's, put it this way: "We are beginning to pay the long-run costs of heavy taxation."

Tim Condon

This may sound unsympathetic but if you believe in a free marketplace and the right to succeed, you must also accept the other side of the coin, the right to go out of business. I believe that if companies fail to adapt to changes in competition and to changes in the public's needs and preferences they have no claim to public support beyond the normal workings of the bankruptcy law.

William Simon
Saturday Review

spotlight

Entrepreneur of Justice

It's no news that our court system is a mess. Costs are high, delays interminable, and actual trials few and far between. What's news is that someone has set out to do something about it. That someone is maverick lawyer-turned-entrepreneur Carl E. Person.

What Person (pronounced peer-son) has proposed is the National Private Court—a profit-making alternative to government courts for resolving civil disputes. Parties choosing to use his court can count on a firm, legally binding decision within *three months*—for under $1000, says Person.

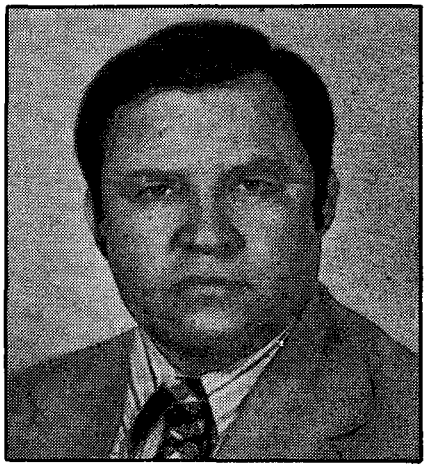
What he is proposing is actually a form of binding arbitration. But it differs from conventional arbitration in several important ways. Arbitration usually dispenses with strict legal procedure and seeks to reach a compromise settlement. NPC, by contrast, will follow federal rules of evidence and federal rules of civil and appellate procedure. Hence, the parties can draw on a vast body of existing law and will be able to predict outcomes more reliably than under binding arbitration. Being based on federal procedural law also makes the decisions appealable, unlike most ad hoc arbitration verdicts.

Parties wishing to use NPC will choose a mutually acceptable judge from the company's roster of qualified attorneys. So far Person has signed up 30 of them, including two retired New York State Supreme Court judges. The contending parties will also select in advance a three-judge appeals panel, just in case. (That's the only appeal allowed, by agreement.)

The judge will hear the case in his law office (no fancy buildings need be built). He will be paid an hourly rate (up to $100 an hour) by the two parties, to hear arguments, listen to and question witnesses, read the briefs, and make a decision. NPC will collect a portion of the judge's fee for its services in setting up the system and bringing the parties together.

Once NPC has amassed a track record, Person thinks many businesses will incorporate an NPC arbitration clause in their contracts, as many do now with American Arbitration Association clauses. But even in the absence of prior agreement, he expects many firms to take advantage of NPC as an alternative to the courts. Besides being faster and cheaper, NPC permits the parties to choose a judge who is experienced in the particular field of law at issue. Also, since there is no public record of the decision (only of the final judgment), the loser can avoid adverse publicity. Further, since arbitration decisions involve only the case at hand (no class actions, and no precedents), they can more readily limit the loser's liability.

After several months of "pre-trial publicity," Person is now embarking on NPC's first marketing campaign, sending several thousand litigants in the trial courts and federal courts in Brooklyn and Manhattan his booklet, "How to Complete Your Pending Lawsuit in 2-3 Months." Once the private court concept is operational in New York, he plans to bring it to California and after that, to the entire country. By operating the National Private Court on a nationwide basis he hopes to assist in breaking down state restrictions on the practice of law by non-residents.



Carl E. Person

Marketing legal services is nothing new to Person, who was one of the first attorneys in the United States to challenge the bar association's ban on advertising. As far back as 1968 he was taking courses at NYU in mail-order and direct-mail marketing. Always something of a maverick, he dropped out of high school but graduated magna cum laude from Long Island University in 1959 and was in the top third of his Harvard Law School class.

His first job after graduation was with the New York law firm of Mudge, Stern, Baldwin & Todd—among whose principals was Richard Nixon. His several years there convinced him that the major institutions of business law—prosecutors, attorneys general, courts, bar associations, and regulatory agencies—serve mostly to protect established firms from the rigors of competition. He decided then to strike out on his own, hoping to "use capitalism to check the excesses of capitalism."

One of his first projects was to create the Paralegal Institute—an educational institution that trains students to become paralegal assistants. In a business, a paralegal can carry out many of the tasks normally given to a corporate counsel, at a fraction of the cost. In his 1973 book, *How to Beat the System and Get Rich—A Paralegal Strategy for Achieving Business Success*, he described the anti-competitive nature of the status-quo business community and the use of paralegals to enable small firms to fight back.

"I believe in capitalism," he affirms. "I believe in free enterprise and competition—and I believe we haven't had any in quite awhile. I'm trying to change that." In his view, a key to freeing the business marketplace is opening up the legal marketplace to competition and entrepreneurship, so that justice is available to all, not just those with wealth and political connections.

These concerns are evident in Person's latest project: selling shares of stock in a costly lawsuit. When he found that the costs of representing a small inventor suing Parker Brothers could run between $20,000 and $30,000 a year over a number of years, he put together a prospectus to raise the money. By raising $500,000 (in $5 shares) and investing it in government bonds, he hoped to garner enough interest to pay the costs of the suit—even if he lost the case. Although not enough investors responded, the prospectus was approved by both the SEC and a federal court in Brooklyn.

Person attributes the failure to inadequate marketing, and has proposed setting up a brokerage firm to market shares in future lawsuits. His Lawsuit Securities Company would exist to finance meritorious lawsuits for profit. "We want to open up access to the courts," he says. "There have to be ways made so the average person has recourse to the courts."

Only 40 years old, Person shows no signs of slowing down. Working 17 hours a day, the (unmarried) Person makes most of his money training the 60-odd paralegal students in attendance at his Institute. But his overriding passion is developing new means of making justice more available. Whether it's selling shares in a lawsuit, suing a bar association, or creating another new type of business, the common thread is the search for lower-cost, more accessible justice.

What is Person really after? He wants to create "...a market for rights—an alternative to government monopoly on justice." Then he adds with a smile, "One hell of a concept, isn't it?"

Robert Poole, Jr.

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movies

• The Buddy Holly Story • Return from Witch Mountain • F.I.S.T.

• Careers of actual persons, living or dead, are always tempting material for films, since "the story is already there"; yet all too often the cinematization is a failure—the central character becomes either a whitewash or a stereotype. This is especially so when the historical person is a musician, and so much of the film's running-time is devoted to the music that little is left for proper development of character or plot.

Many misgivings arise, then, in seeing a film about a composer of music only recently dead, particularly when the reviewer would usually prefer silence to the kind of music being performed (country/western and rock-and-roll and various points between). **THE BUDDY HOLLY STORY** is, indeed, not profound in its characterizations, nor is the script particularly remarkable other than for simplicity and consistency. Yet the film turns out rather better than most of its kind, mainly for two reasons:

1. The main character, acted by Gary Busey, is performed with enthusiasm, spontaneity, and total dedication. An actor in unremarkable parts in recent films (e.g. *Big Wednesday* and *Straight Time*), he is completely in his element in this one, and acts as if he was born specifically to play this role. Character and actor are here perfectly matched.

2. A remarkable amalgam occasionally emerges from the elements in this film; incidents which seem quite unpromising turn almost into sheer magic—as when a Harlem producer has hired the three musicians from Texas solely on the basis of hearing their recordings (which he takes to be "black music") and finds to his dismay when they arrive at the Apollo Theater for a week's run that the performers are white. The audience claps, the curtain goes up, and there is a stunned silence; but when the beat of the first number becomes evident the black audience's resentment slowly transforms into enthusiasm and by the third piece they are dancing in the aisles. Several scenes of this kind, unassuming, unpretentious, with no attempt at "social significance," are extremely well rendered, and they go a long way toward making this film more engaging than many a film biography of great composers such as Chopin, Liszt, and Mahler, where one has the music to be moved by but not the cinematic treatment. The standard term "heart-warming" is not an inappropriate one for describing this film.

—John Hospers

• Disney films haven't been the same since the death of Disney. They aim at the same audience as before, but the humor tends to be strained, the intrigues are not very intriguing, and the mysteries not very mysterious. The characters are made of cardboard. All this holds true of the latest Disney production, **RETURN FROM WITCH MOUNTAIN**. (One is tempted to ask, *which* mountain? since no witches appear, nor any mountains by that name.) In spite of its being filmed largely in Pasadena, this one falls in the general category of science fiction, since it begins and ends with a space ship, containing human beings with distinctly midwestern accents; but it has more to do with telekinetic powers than with outer space. It is a sort of poor man's *Star Wars*.

One remembers Bette Davis as a fine actress; she still is, but what she is called upon to do in this film could have been done equally well by a thousand others. The villains are very villainous, and the good guys exude virtue through their pores from the very opening shot. There is little suspense and still less characterization. The special effects (mostly levitating objects) are interesting and sometimes mildly comical without being spectacular. At least one can say that the story-line is clear and unmuddied. And that it's a very diverting film to which to take your children—you will probably enjoy their reactions more than the picture. The G rating, rare these days, assures the film's innocence—and usually, alas, its insignificance as well.

—J.H.

• In 1937, after Roosevelt had spent billions of Americans' dollars "to get the economy moving again," there were still 10 million unemployed in the United States—as many as there had been in the worst days of the depression—and Roosevelt admitted to his aides the failure of his vast federal spending programs. (See John T. Flynn, *The Roosevelt Myth*.)

But not one film viewer in a hundred thousand is likely to be aware of this, or of the causes of depressions in general, nor have they read Rothbard's or Robbins' books on the subject. What they do see in the opening scene of **F.I.S.T.**, which is set in Cleveland in 1937, is hundreds of men competing for one job and only one getting it. The clear inference is that the employer is a cold-hearted villain for not hiring the entire 500. There is no suggestion of the fact that the employer may have been having a hard time himself trying to survive under an alphabet-soup of New Deal regulations, and that if he had hired the whole 500 every time there was an opening for one, he would soon have had to charge so much more for his product that he would have to close down his business, which in turn would mean that *all* his employees would be out of jobs.

This scene is typical of the abyss of economic ignorance prevalent throughout the film. When the head man at the factory will not give in to strikers on fringe benefits, the audience boos, and the inference is drawn again that he would have been handsomely able to do it but refused because he was a cold-hearted Scrooge. It is assumed that he could have taken the amount out of profits indefinitely and still kept the price of cars low enough ($500 for a new Ford in 1937) to meet competitors' prices and also enable customers to buy them. This film not only does nothing to correct such economic ignorance, it adds a strong dose of emotionalism in the direction of sticking with one's already entrenched interventionist prejudices.

The film's central character is Johnny Kovak (Sylvester Stallone) as the striker who becomes a union leader and "to get ahead" makes deals with organized crime. His character is so tarnished by the time the film is half over that the senator leading an investigation into his criminal connections (Rod Steiger) looks quite moral by comparison. (A Chicago company where employees are already getting superior benefits resists forced unionization: the employer says, "I don't want to force my men to do things they don't want to do," and Stallone replies, "We can't make no exceptions, Frank." No doubt this is supposed to illustrate his devotion to principle.) Yet the writing and direction of Norman Jewison is slanted so as to direct the sympathies of the audience in favor of Stallone to the very end; never mind that he had people clubbed and even indirectly got his own brother killed; he got his union members what they wanted, so everything is all right—any means to a good end, you know.

The film is a thinly disguised life of Jimmy Hoffa, and it is quite wonderful (in the non-colloquial sense of that word) how in spite of the depiction of one detail after another counting heavily against Kovak's character, the film still tries to palm him off as a hero. Besides, well before the end the audience, accustomed to the simplicity of all-white and all-black characters ("the goodies" and "the baddies"), is

(Continued on p. 47)

books

A Theory of Racial Harmony

By Alvin Rabushka
Columbia: University of South Carolina Press. 1974. 106 pp. $5.95.

Reverse Discrimination

Edited by Barry R. Gross
Buffalo: Prometheus. 1977. 401 pp. $14.95.

Reviewed by William R. Havender

One among the more vexing political questions today is how to devise social structures that would permit diverse ethnic and racial groups to live together at peace within a single polity. The problem ranges from the phenomenon, newly arisen in the United States, of "preferential" admissions and quotas for "disadvantaged" groups to the aggravated tensions—between the English and French of Canada, the Turks and Greeks in Cyprus, the Christians and Muslims in Lebanon, the Protestants and Catholics in Northern Ireland, and the whites and blacks in South Africa—that have led, or could lead, to total rupture of the political association between the respective groups.

Two important books focus on different aspects of this problem. The first is Alvin Rabushka's *Theory of Racial Harmony*, which seeks to explain the steadily increasing occurrence of racial and ethnic conflict around the world, proceeding from the feature that seems common to all of these struggles—that peoples' fundamental fear is not of rival groups *per se* but only of the threat they might pose once they gain control of the powers of *government*.

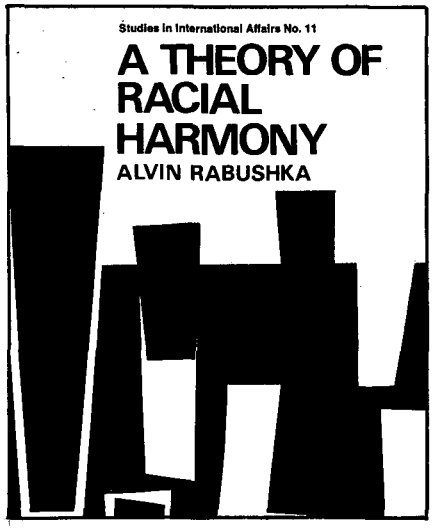
The book's basic thesis is this: that the risk of racial and ethnic antagonisms is greatly reduced in those societies in which the role of government in the lives of its citizens is minimized. Crucial to the justification of this hypothesis are the vital differences between two opposite modes of social allocation and decision making—the *political*, as contrasted with the *voluntary exchange*, or *market*, process. Most social activities might be directed by either kind of mechanism, so the question is, How are race relations affected by these different sets of public decision rules? Rabushka concludes, after a careful analysis, that to prefer a *political* mode of provision and allocation of those social undertakings that also could be provided and allocated through the market vastly raises the probability of ethnic and racial confrontation.

This primary insight, derived from purely theoretical considerations, turns out to be capable of unifying a number of what would otherwise seem to be diverse and unrelated phenomena in world politics. It can account for the generally peaceful association within the comparatively libertarian, early United States of diverse ethnic and religious groups that in their home countries fought bitterly; it can explain the *growing* communal antagonisms in old pluralist nations, like Great Britain and Canada, that have *recently* had an explosion of governmental intrusion; it can account as well for the *growth* in racial and ethnic contention that has followed the displacement of a (comparatively) lightly governing colonial power with state socialist regimes in Nigeria, Uganda, Burma, Sri Lanka, India (pre-partition), Pakistan (pre- *its* partition) and elsewhere; and it can explain, too, the relative absence of such conflicts in the freer economies of Hong Kong, Switzerland, and Singapore.

Given, then, the continued dominance of statism in the sorts of political solutions bandied about for these situations—such as forcefully incorporating Northern Ireland into the Irish Republic (without specified guarantees for the Protestant minority); or joining Israelis and Arabs into a secular, *socialist* Palestine; or forcing white and black South Africans into a common state under *unlimited* "majority rule"—one may rest secure in the certainty that violent racial and ethnic flare-ups will endure far into the future. For the simple fact is that these problems are insoluble, short of outright repression or total partition, in terms of prevailing political models. Instead, they can be peacefully resolved only by amplifying the profound insight supplied by classical liberalism/libertarianism, that a problem of surpassing importance in structuring *any* well-ordered polity is setting appropriate and strong *limits* on the sorts of public questions that will be resolved through the political process. Which leads to the electrifying thought that the grandest opportunity for the practical demonstration of libertarian reforms may well turn out to be, not on a South Pacific atoll, but in a South African archy!

In contrast to the lucidity of argumentation one finds in Rabushka's book, one can extract only a murky image from Barry Gross' anthology, *Reverse Discrimination*, which is a collection of essays, both pro and con, about preferential hiring and admissions for "disadvantaged" minorities in the United States. This opacity is in no way the fault of Mr. Gross, but lies rather in the fact that this debate *is* in a state of great chaos, so much so that the central issues are usually obscured. There are, to be sure, numerous worthwhile observations spangled through many of the essays, especially those by Messrs. Todorovich, Nisbet, Hook, Seabury, Sowell, Glazer, Black, Douglas, Greenawalt, and Gross. But as illuminating as they are, these writers simply do not succeed in countering in other than anecdotal, pragmatic terms the fundamental philosophical thrust of the arguments also advanced here by J. Stanley Pottinger, Archibald Cox, John Hart Ely, and others; unfortunately, the writers who oppose quotas seem to have a deadly eye for the capillary rather than the jugular! One is left thinking that the verdict of moral idealism and compassion comes down wholly on the side of quotas and that all that can be tinkered together in the way of a defense against them is a grubby collection of mechanistic, ad hoc, and rudely practical considerations.

This fecklessness is perhaps most clearly evident in the last third of the book, which concerns itself solely with abstract theoretical essays by social philosophers. These essays cluster in the range from fair to awful, with only two of the sixteen (by Robert Hoffman and Lisa Newton) sufficiently fine that I happily except them from the general comments below, and



with two of them (by Paul Taylor and Hardy Jones) so teeth-gritting that one is put forcefully in mind of J. S. Mill's remark on encountering the intellect of Hegel: "Conversancy with him tends to deprave one's intellect"! Without exploring the cavities in each writer's contribution, let it suffice here to identify certain themes that suffuse the articles in support of quotas and whose failure to be effectively refuted is the cause of the overall weakness of most of the arguments in opposition.

1. Perhaps the most important intellectual thread, recurring in numerous pernicious manifestations, is what F. A. Hayek terms methodological collectivism. One of the contributors writes, for example: "Obligations *can* be created between groups [*qua* groups] when one group injures another group" (my emphasis). Such a statement is, of course, purest crap. The fact is that there is *no* generalized obligation that transfers willy-nilly from guilty persons to innocent ones simply because they might be categorized together on the basis of a morally irrelevant trait.

Another writer emits the anesthetizing puff that quotas that *favor* minorities are quite okay, since the majority is here choosing to disadvantage, not a minority, but *itself*. How ingenious! Except that it is *not* a "majority" that does the choosing at all but *a few* high-handed school administrators, judges, and government officials who would not dream of resolving this question by referring it to a vote. Nor does giving "preference" operate on groups *as a whole* but only on *a few* members of either group; no more than a small number of the previously "disadvantaged" group will directly enjoy the benefit that is "owed" to that group in its entirety, and only a small number of persons from the "guilty" group will carry the *full* burden of paying the "reparations," in the form of forgoing earned career opportunities, that supposedly are "owed" by that group as a whole.

Yet another fallacy-ridden incarnation of methodological collectivism is the whole notion *in se* of drawing inferences about the degree of a society's "social justice" from the arrangements of *group* parameters—specifically, of presuming that the distance a society has yet to travel on the road to the condition of perfect justice is measured by the departure from equality between groups in such parameters as average income, education, representation in the highest professional positions, and so forth. It is easy to show, however, that there are *many* factors having nothing to do with "justice" that can generate mean differences between groups and that even *small* mean differences can show up as *large* "disproportions" in *highly selected* positions. Hence, one can infer *nothing* about justice from such data (see W. R. Havender, "Meting out Injustice, REASON, Sept. 1976, p. 14).

2. The philosophical supporters of quotas are brothers, too, in their unrelieved ignorance of economics. There is nowhere a symptom of comprehension that private actions under market conditions have, in the fluctuations of the price system and in the potential for instituting boycotts, a built-in corrective for discriminatory practices. Nor that giving a positive incentive to certain groups in the form of special privileges will encourage all other groups that can cobble together a plausible claim to emerge and press them. Nor that the supply of "qualifications" that a candidate chooses to acquire and offer in the competition for desirable positions is itself an "economic" quantity, which will inevitably decrease as the anticipated return for it—the "profit" it can bring—decreases.

3. They embrace as well what to some of us must appear as the howlingly naive opinion that government *can* in fact be trusted and worse that *only* government action can be effective in counteracting the effects of past and present discrimination. The truth is not only that governments are *not* the only game in town for successfully fighting prejudice but that they are terribly fearsome and whimsical creatures. After all, the *true* lesson coming out of the government's change from its disgraceful past treatment of the blacks and Japanese is, not that it has sincerely repented to the depths of its dear little heart and irreversibly reformed itself since the bad old days, but rather that it is mercurial. So wouldn't it be a wise precaution to set in granite an *absolute* proscription against the government's making an official determination of a person's race and treating him differentially on this basis? Why build a bridge when it is the chasm that protects you?

These observations give only the most fleeting glimpse of the rancid intellectual broth steeping this debate as it currently transpires among philosophical theorists. On balance, Gross' book must be rated a grand success at faithfully reflecting the current state of the public argument. But the reader who seeks a definitive *resolution* of the issues herein thrashed about will have to await a book that is yet to be written.

William Havender writes frequently on the issue of affirmative action.

Ayn Rand and Alienation

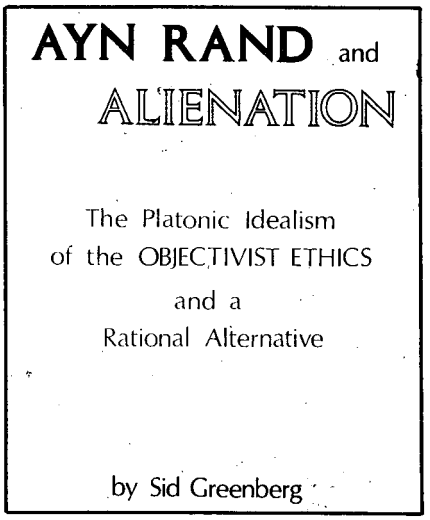
By Sid Greenberg
San Francisco: Sid Greenberg. 1977. 131 pp. $3.95 (paper).

Reviewed by Paul Beaird

A recurring complaint about capitalism (or liberal democracy) is its lack of moral foundations. From Marxists to neo-conservatives, all varieties of intellectuals have mounted this attack on the system. That classical liberals, despite their inclinations toward amoralism, did very well at formulating a benign, free, productive system of human community life is often simply ignored.

Ayn Rand, the novelist-philosopher, *has* attempted to show capitalism's moral basis. She has done so in her novels and philosophical essays. Although one cannot ferret out from these a full-blown case for capitalism, by comparison with what Marxists and theists have had to offer as the rational basis for their moral or political beliefs, her contribution has been considerable. No longer is it honest for capitalism's critics to claim that it is backed up only by Locke's sketchy natural law system, Bentham's hedonistic ethic, Mill's collectivist and hopelessly muddled utilitarianism, or Spencer's evolutionary ethics. Rand's Objectivist ethics, the morality of rational egoism, should by now be attended to by critics of laissez-faire capitalism.

Yet the neo-conservatives, for example, simply refuse to take on Rand. Instead, there are books by psychologist Albert Ellis, economist John Robbins, pedagogue William O'Niell, and now by artist and limerick composer Sid Greenberg—all rather puny efforts to come to grips with the philosophical system of Objectivism.



Greenberg's book has some value. It serves as a puzzle to be solved. He claims to have shown Rand's several important

points (in ethics) contradictory, dichotomized, and definitionally circular. But is Greenberg right?

Greenberg sees Rand advocating that a person live up to the abstract standard "man's life" rather than live for his actual happiness. But he gets this interpretation by converting her definition of *happiness* into a circular one by equating *value* and "that which makes one happy"; by treating *happiness* and *life* as synonymous, when the passage of hers that he quotes calls them "two aspects of the same achievement"; by claiming that Rand dichotomizes "standard" and "purpose" so as to exclude happiness as a measure of good—yet when she includes happiness as a corollary of regarding one's own life as one's highest purpose, he claims she's "slipping it in."

Still, he has one interesting question. "Consider... a person [who] loved to play the guitar and had an opportunity to play professionally while also liking to write and having an opportunity to write professionally. The only basic difference between them as values is the level of pleasure involved" (p. 36). "Rand...never approaches the question of how one chooses between alternative personal pro-life values" (p. 26), claims Greenberg. "Pleasure is the only intelligible criterion of action here—yet according to Objectivism, it is irrational to guide oneself on the basis of pleasure or happiness" (p. 23).

It is *Greenberg* who confuses the abstract and the concrete, giving this "counter-example" as proof that general principles will not work in every case. This won't do—not without more details about the life and context of the person described. A thorough ethics offers a method that not only generates the broadest standards of value and virtue but also enables one to make choices of detail. Rand's discussion of teleological measurement (Introduction to Objectivist Epistemology, pp. 34-35), her essay "Causality versus Duty" (*Objectivist*, July 1970), and many other passages present such a methodology.

Why is "man's life" the standard of morality rather than happiness? From "Causality versus Duty" we learn that in a rational ethics one's knowledge of causal connections guides one's choice of means to attain a chosen end. In Rand's discussion of teleological measurement we learn that the widest end one can choose serves as the indicator of the standard against which to measure all means and lesser goals. In "What Is Capitalism?" we learn that things are objectively good or bad depending on their causal consequences for human life; these consequences are determined by human nature, which is thus the objective standard. We learn more in "The Objectivist Ethics," which shows it to be the objective standard and discusses just what kind of knowledge of causal relations is included in this standard, man's life qua man.

Human nature can be the standard because humans have objective needs against which other things can be measured on the basis of their causal consequences for those needs. Happiness cannot be the standard by itself—it is an emotional *response* to the achievement of one's values. But by what standard does

Book Hints

While new activities are daily grafted onto the already bloated governmental bureaucracy and the sphere of individual choice is continually pruned, there is an ongoing debate about whether all this makes sense. Thus a spate of new books on the issue of the proper respective roles and scope of political institutions and economic freedom.

Charles E. Lindblom offers a comparative analysis in *Politics and Markets: The World's Political-Economic Systems* (New York: Basic Books, 1977, 403 pp., $15). "Market-oriented systems" (the author spares himself the debate over whether so-called capitalist systems really are capitalist) get a hearing, but a rather ambivalent one. The same might be said for Irving Kristol's *Two Cheers for Capitalism* (New York: Basic Books, 1978, 256 pp., $10), which is, except for the lead chapter, a collection of previously published material. While the market, maintains Kristol, is all well and good in its proper place (which is, admittedly, more than many will allow), it is not only neutral with respect to, but positively fosters a neglect of, the nonmaterial values—religion, family, culture, and decency—that bind together the members of society in a historically successful unit.

Then there are books that you won't see picked up by major publishers and (therefore?) won't see reviewed in the national media. In *Does Freedom Work?* (Ottawa, IL: Caroline House Books, Green Hill, 1978, 192 pp., $10), Donald J. Devine not only contends with criticisms of classical liberal systems for their alleged injustice but takes on Kristol- (and, by the way, Marxist-) style complaints about the supposed crass materialism of market systems. Set in a broader context, Madsen Pirie's *Trial and Error and the Idea of Progress* (LaSalle, IL: Open Court, 1978, 223 pp., $10.95) is also a defense of the notion that economic and social progress (just like scientific progress, in a modified Popperian schema) are best secured by broadening the scope of individual choice.

Similar issues are addressed in a different way in two books that look at the history of mankind, setting out a number of case histories and asking what makes for successful and unsuccessful economies and societies. Jude Wanniski, associate editor of the *Wall Street Journal*, concludes in *The Way the World Works* (New York: Basic Books, 1978, 319 pp., $12.95) that, whatever the political arrangement, it all hinges on the way citizens are taxed and the proceeds distributed. Antony Fisher notes that historically wars have led to ballooning bureaucracies and taxes, creating inflationary conditions that governments attempt to solve by increasingly inflationary measures, whereas more-than-less free regimes have seen the flowering of prosperity and creativity. Fisher's book was brought out in England in 1974 as *Must History Repeat Itself?* and has now been revised and published as *Fisher's Concise History of Economic Bungling* (Ottawa, IL: Caroline House Books, Green Hill, 1978, 113 pp., $8.95).

Recent books of related interest include William E. Simon's *A Time for Truth* (New York: Reader's Digest Press, McGraw-Hill, 1978, 248 pp., $12.50), in which the former secretary of the Treasury lambastes welfare-statism; Martin Anderson's *Welfare* (Stanford: Hoover Institution Press, 1978, $10), a discussion of why promised radical welfare reforms have failed to materialize and of what the general population, as opposed to the intellectual elite, want in the way of welfare reform; and, with a simple and arresting title, *Charge* (London: Temple Smith, 1977, 224 pp., £ 3.50 paper), in which Arthur Seldon dissects in layman's terms the widespread distinction between public and private goods and argues for a very restricted set of the former—based on the theory and experience that things work out best if people are *charged* for what they get and thus allowed a choice of what to buy.

—Marty Zupan

one choose those values? Happiness will not guide you there; it can only come later, in response to the success of whatever values you choose. It is Ayn Rand who asked the question, Will you choose values that are consonant with man's needs or that violate them? By themselves, emotions—as reactions to evaluations—cannot tell you what to choose. If they seem to favor guitar playing over writing, it is because you have already made choices, which themselves will enhance or frustrate your life as they are or are not in accord with the standard.

Greenberg perpetrates other misinterpretations—for example, of Rand's point that "life" is the root of "value." In the philosophical struggle between the free society and varieties of statism, such fine points have often decided the issue. (Utilitarianism's inability to give a clear definition of *pleasure* and *happiness*, Spencer's failure to see the necessary link between free will and ethics, and Hayek's troublesome characterization of coercion all have made the task easier for the enemies of liberty.)

But beyond raising some interesting issues, Greenberg's book is simply amateur psychology. It speculates about why some of Ayn Rand's admirers exhibit certain psychological or (to Greenberg, at least) annoying traits. Is the book worth reading? Is it fascinating to see someone rediscover the truths of alchemy—as Greenberg rediscovers hedonism and offers it as a moral system? Unless one is desperate for fascination, it would be much more profitable to study the works of serious thinkers.

Paul Beaird is a graduate student in philosophy at California State University at Los Angeles and is a computer scientist.

viewpoint

(Continued from p. 39)

tax rebellion if we were to succumb to the "responsibility" line of the National Tax Limitation Committee.

Far better than this craven conservatism was the fighting spirit of the cartoonist Edward Sorel, in his cartoon commemorating income tax day this year (appearing in, of all places, the *New York Times*, April 17). Sorel depicted Uncle Sam as "Godfather Sam," and had the taxpayer kneeling contritely before the Godfather. "Yes, it's true, beloved godfather," says the taxpayer, "I haven't paid my protection money... But you never gave me the protection you promised me last year. You promised me safe streets but I'm still getting mugged. You promised my kids a free education but I have to send them to private schools to make sure they learn something. Your postal service costs too much... Your train service is lousy... Your health service is non-existent... What Am I Getting For My Money?" To which Godfather Sam replies, angrily: "I'll tell ya what yer getting... The privilege of complaining!" When the taxpayer asks, "Is that all?" Godfather fiercely turns him over to the IRS.

Here is a fighting spirit that is not only far truer to the essence of the matter than mealy-mouthed "responsibility": it also works far better in mobilizing the public. When Howard Jarvis whipped up the voters with magnificent clarion calls to throw the bureaucrats and looters out, his Establishment opponents answered (while whipping up scare tactics) by decrying Jarvis's emphasis on emotion. On June 6, the voters of California showed that they realized that the response of such men as Howard Jarvis is precisely appropriate to the gravity of the disease caused by evermore crippling taxation. The victims—the great American public—are rising up angry. And it's high time.

movies

(Continued from p. 43)

probably somewhat confused as to how Kovak fits into that categorization, and since he is not all black they still think of him as on-the-whole-white.

Character deterioration is one of the most difficult things to portray, whether by the author of a novel or by an actor playing a role. It was done brilliantly, for example, in the character of Hurstwood in Theodore Dreiser's novel *Sister Carrie*, and by Laurence Olivier in the film version of that novel: both the novel and the film are among the finest produced in America, and among the most neglected. No such portrayal is achieved by Sylvester Stallone, who blunders through the part with the subtlety of a 10-ton truck and no sense whatever of cumulative character delineation.

This aesthetic fault is compounded by the moral one of presenting one economic fallacy after another as if it were a profound and moving truth. Not all of Jewison's careful attention to period detail and atmosphere recreation can make up for these grievous faults. To evaluate a film aesthetically is not the same thing, of course, as to evaluate it ethically, but because of the subject-matter of this film it is the second aspect that stands out, and whose mistreatment is likely to wreak the most damage.

—J.H.

letters

(Continued from p. 9)

Bakke case before the Supreme Court. He concluded that "(g)iven most people's conception of the function of government... the justices of the Supreme Court... cannot possibly render a *correct* decision." Indeed they cannot as there is no morally legitimate basis for the State in the business of education for any reason. The problem with Dr. Machan's thesis is not that he is wrong in principle but that he waffles on the legal mandating of racial, ethnic and sexual quotas....

He says, "There is nothing *ipso facto* wrong with trying to help the underprivileged, but there may be something unwise about changing the functions of a medical school, law school... to achieving that end... rather than to teaching its field of specialty to the most qualified applicants." Further on he asserts that applying "the criterion of (statistical) need on the part of some racial group... at

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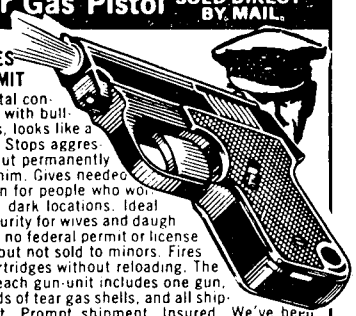

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times... may have merit." We disagree. In the present context of the widespread use of quotas, these statements suggest a moral ambivalence on the question of equal opportunity founded on individual merit.... We assert that the willingness to deal forthrightly with "hard" issues is all necessary for the integrity of a philosophical position.

The outcome of Bakke is not insignificant.... It is strange, for example, that Dr. Machan, an ardent minimal statist, fails to identify and examine the constitutional and legal tools available for our defense, i.e., the equal protection and due process clauses of the 14th Amendment and Section 703(j) of Title VII of the Civil Rights Act of 1964....

Contrary to Machan's equivocations on preferential racial (or ethnic or sexual) treatment in college admissions, we hold that quotas ("goals and timetables") or preferential treatment instituted by law are an abomination to a meritocratic and capitalistic social order and constitute a vicious injustice against individuals in disfavored categories. If we are to be forced to pay for education and public works, then access to these facilities must be available to those who have been forced to pay. Indeed, State tax-financed "services" are *always* arbitrary and coercive, but at least within a constitutionalist State we can fight to prevent the system from further biting the hand which slaves for it.... Education, experience, and other examinable abilities, have been greatly downgraded in significance by judicial and administrative decree. The landmark case of Griggs v. Duke Power (1971), and succeeding regulatory doctrines by the Equal (sic) Employment Opportunity Commission, have made any reasonable employment examination in private firms with more than 25 employees legally impossible....

Contrary, then to Dr. Machan's conclusion that the Supreme Court "cannot possibly render a *correct* decision," we think it is important to cite that they can and should render a constitutionally *proper* decision, i.e., that quotas are against the law of the land and against any objectively founded code of ethics.

Richard R. Slomon
Executive Director, MERIT
Seattle, WA

Machan replies: First, either the Court can or cannot render a correct decision, contrary to Mr. Slomon's letter. Second, MERIT may disagree, but there are clear cases when the criterion of (statistical) need could guide either private or public policy—e.g., the police could focus on the steady higher crime rate in some district and assign greater protection as a result, and one might choose to favor a group of recently deported Rumanians in hiring at one's firm as a matter of generosity. Third, while the outcome of Bakke is indeed not insignificant, the case is so confused that a general legal or moral argument focusing on it alone cannot be made one way or another. The constitutional case in support of Bakke is extremely hazy, mainly because of the interstate commerce clause and the generally accepted provision of national police power that has lent support to so-called social legislation since the early 1800's. Therefore, Mr. Slomon is wrong to assert that "quotas are against the law of the land." Due process has, for the better part of the 20th century, been treated procedurally, not substantively, so (except for some free speech, assembly, and press cases, though by no means all) the 14th Amendment and other constitutional provisions just cannot be consistently raised in the Bakke case (or any other). Finally, Mr. Slomon and MERIT may be assured that I am not a waffler on any moral issues. I simply recognize complexities and don't paint an easy picture where none can honestly be painted. (Also, I am not a minimal or any kind of statist. I defend the moral appropriateness of a certain version of constitutional government but not of any State, i.e., of some organic entity over and above the citizens of a country.)—**T.R.M.**

Roche Withdrawal

Thanks for the Spotlight essay about Dr. George C. Roche, III [April].

Since some of the article dealt with Dr. Roche's Senate campaign, I thought your readers should know the reasons for his withdrawal as a Senate candidate. His letter to his supporters stated, in part:

> At the time of withdrawal from the campaign, I announced that I was doing so for reasons of health. Some people cannot seem to accept that reason, apparently believing that front-running candidates simply do not withdraw from political races.
>
> But the facts are clear. I could never have successfully completed this campaign in my present physical condition. The rigors of campaigning are simply too great. The fight we faced demanded a healthy, full-time candidate.
>
> My physician told me to choose and I have chosen.
>
> The campaign may be over for me, but all of those who aided my candidacy have produced some major benefits even in this short period. I immediately became a front runner for the Senate seat, serving notice on the Republican Party and other potential candidates that they can win *if* they adopt a highly principled stand. My strength as a candidate was based upon the belief that we are overtaxed, overregulated and suffering from an excess of big government in our lives. The support which my campaign attracted can serve as a reminder that most citizens, in Michigan and across America, still value their private institutions and their freedom.

I would appreciate your bringing this information to the attention of your readers.

Don Lipsett
Hillsdale College

Expletives

May I suggest a possibly productive use for the many acronyms and agency titles our government has provided for us? Let's use them in lieu of those old, time-honored scatological and sexual references in common usage and considered by many to be too raw for polite society (cf. "expletive deleted").

Perhaps a couple of examples would help. When one smites one's thumb with a hammer, one might blurt, "OSHA!" This sounds a lot like what one might say anyway. Or, if straining mightily at some herculean task and/or in great pain, one might grit, "Internal! Revenue! Service!"

These expletives could and should be used with reckless abandon. After all, they are not considered obscene except by readers of REASON and by others similarly enlightened. Perhaps by such usage we might "dirty up" these expletives in the so-called popular mind and even impart some subliminal libertarianism.

L. E. Beezley
Joplin, MO

Just What the Doctor Ordered

What's your secret, or not so secret, proclivity? Do you, perhaps, enjoy reading "obscene" books or looking at certain types of pictures? If SB 1437 (now HR 6869) is passed by the House of Representatives and signed into law, you'll actually need a *doctor's prescription* for "receipt of such material."

Under Section 1842 it will be an offense to "disseminate obscene material" not only to minors, but to "commercially disseminate" it to any person. "Commercially disseminate" includes nonprofit dissemination if mass communication is used as a means of distribution.

However, don't worry. It's all OK *if* you are able to demonstrate (proof is up to you—it's what is termed an "affirmative defense") that you are "a person associated with an institution of higher learning"...conducting research into this subject area; or—get this—you can demonstrate that you are "a person whose receipt of such material was authorized in writing by a licensed psychiatrist, psychologist, or medical practitioner." (Sec. 1842-d-2) Would you believe it?

"Hey, Doc—I need a sex fix. How about writing me a prescription for *Joy of Sex* or *Hustler*? Please, Doc, I'm desperate." Well, in my case I'd request *Playgirl*.

Sarah E. Foster
Sherman Oaks, CA

Letters from readers are welcome. Each receives editorial consideration, although only a selection can be published and none individually acknowledged.

classifieds

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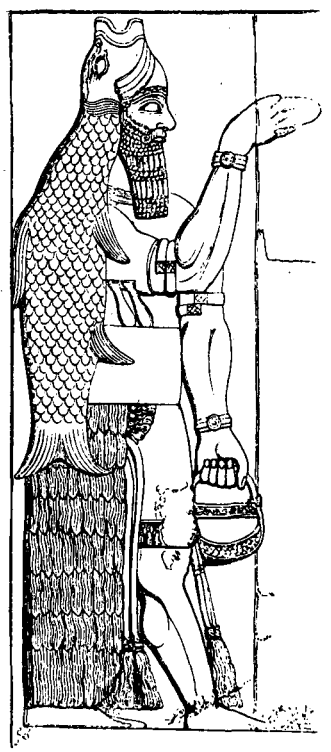
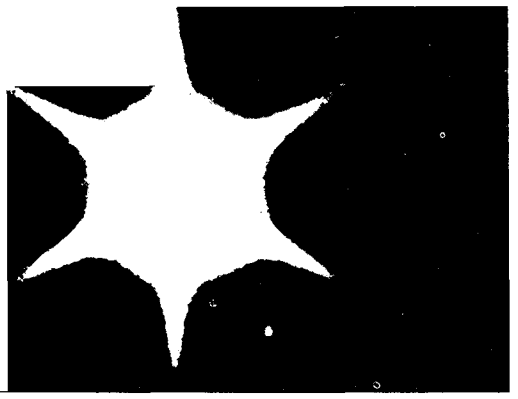


One of the four Dogon priests who revealed the Sirius traditions to anthropologists.



Sirius B, which is the tiny dot to the lower right of the large star, Sirius.

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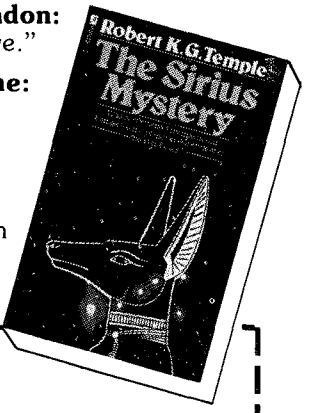

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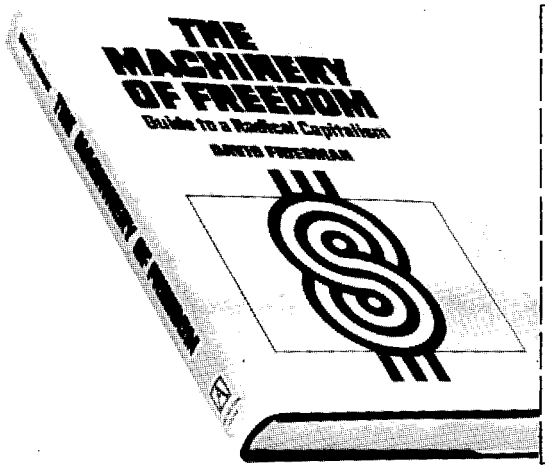

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